Legis 15.06 (1-4)

App. F. IX-4

1906

File No. 15-1906

Previous References (Legis)

Serial Nos. 1-4

Later References

General and Revenue Secretariat.

A collection

Serial Nos. four

manuscript Part A for July 1914

SUBJECT

Introduction of the Probate and Administration Act

Manasseh Ezekiel Gubbay
16-11-71

1906

File No 15-1906

[illegible]

for July 1914.

Judicial & Legislative (Secretariat).

"A" Collection. Serial No 1-4

Introduction of the Probate and Administration Act.

Table of contents

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1.	To the Hon'ble the Resident in Mysore. No 529 dated 23-6-12. Forwards a copy of the Probate and Administration Bill with a statement of objects and reasons and states that the Bill will be placed before the Legislative Council in due course.	
2.	From the First Assistant to the Resident. No 3894 dated 8-7-12. Informs that there is no prima facie objection to the Bill being placed before the Legislative Council.	
3.	To the Compiler, Mysore Gazette. No J 3671 dated 13-6-14. Orders the publication of the Regulation as Regulation No VI of 1914.	
4.	To the Compiler, Mysore Gazette. No J 202 dated 23-7-14. Directs the publication of an erratum notification.	

T V R.

G. R. S. 11

1906-07

GENERAL AND REVENUE SECRETARIAT

(Legislative)

NOTES.

File No 65

FILE HEADING.

Indian Chiefs Act & Probate & Administration Act (Amendment) Bill 1906

From

No.	Dated	Received
Diary No.	Enclos.	Spare Copies.	Serial No.

BRIEF ABSTRACT OF LETTER.

NOTES AND ORDERS.

Secretary's mark.

"Referred to the Chief Court for favour of opinion"

5/

Forwarded to the Registrar Chief Court ~~[illegible]~~ for favour of opinion

B O

Wimberley

RD 3/12/06

Notes—First sheet.

MGCPB [illegible]—17-2-05.

7/12/06

Introduction of the Hindu Wills Act and Probate and Administration Act.

Messrs. B. Kesavaiengar, Kesavadasaiengar Belur Taluk, and S. R. Balakrishna Rao, Shimoga.

Summary of discussion.—The introduction of (1) The Hindu Wills Act is prayed for also (2) The Probate and Administration Act.

Mr. Balakrishna Rao presented a note on the subject prepared by Mr. C. Krishna Murti.

Reply of Government.—Noted.

Sd 21 May the matter be referred to the Chief Court for favour of opinion

21/11/06

3) may be filed for the present

H Matthan
27-11-06

Seen

4 Referred to the Chief Court for favour of opinion

H S Chandrasekhara Iyer.

28/11/06

Sgd Draftsman

Sd L. Bara

Serial No.

6) I am most decidedly of opinion that a Regulation dealing with Hindu Wills and Probate and Administration in the case of Hindus is required in Mysore but I am not of opinion that it would be advisible to introduce the Hindu Wills Act and the Probate and Administration Act now in force in British India into Mysore. A reference to an excellent little book on Hindu Wills by Phillips and Trevelyan (Calcutta, Thacker & Spink & Co., 1901) will show in what a confused state the law is in British India. I would suggest that, if it is decided to take any action, a draft regulation should be drawn up based on Acts XXI of 1870 and V of 1881 and circulated for consideration of those whom it might be thought advisible to consult.

5-12-06.

Lewis Moore
Chief Judge.

7) I am not sure that there is much that is peculiar to the Hindu Wills that cannot be laid down as general law. The Indian Succession Act being inapplicable to Hindus, they had to distinguish the subsequent enactment applying its main provisions

GPB—50,000—23-10-05

Serial No.

to Wills by Hindus by a distinguishing epithet. The Succession Act has a very partial applicatio in Mysore, not even Native Christians being bound by it. I wonder if it would not be possible to embody the law about Wills & Probate & Administration in a general enactment, with such reservations as may be necessary to leave unaffected the substantive provisions of Hindu & Mahamadan Law. I believe these reservations need be only a few comparatively.

8) 6 I feel bound at the same time to remark though with diffidence that in a poor country like this, the necessity for such a codified law on this subject is not felt with any keenness by the General Public.

5-12-06. H. Mayeendayya

Judge.

S

7) As I have already observed in the file relating to the introduction of the Trusts Act, I have no objection to a Regulation on the lines of the Probate & Administration Act being passed, but I am opposed to the introduction of the Hindu Will Act. This Act is in force in the Presidency t

Note—Contn. sheet

GPB—50,000—23-10-05

Serial No.

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5-12-06. H Macgeemdayya

Judge.

5

7 As I have already observed in the file relating to the introduction of the Trusts Act, I have no objection to a Regulation on the lines of the Probate & Administration Act being passed, but I am opposed to the introduction of the Hindu Will Act. This Act is in force in the Presidency t

GPB—50,000—23-10-05

Serial No.

of Madras and Bombay and in the territories of t Lieutenant Governor of Bengal and in no other part of British India. The portions of the Act not relating to the grant of Probate & Administration the powers duties and procedure of executors and administrators, are even now considered unsuitable for the moffusal districts of Madras and Bombay and for the provinces administered by Lt Governors and Chief Commissioners An attempt was made in 1881 to pass a law for the whole of India, in supersession of the Hindu Wills & Probate & Administration Acts, with the object of declaring the extent of the testamentary powers of Hindus & Buddhists and to provide rules for the execution, attestation, revocation, interpretation & probate of their wills; but the attempt was given up because it appeared from the opinions received from various parts of the country that the right of testation had been but imperfectly recognised in some places, and it was believed that the introduction of the rigid rules laid down in the Hindu Wills Act, to places far removed from the Presidency towns and from the influences of Englishmen and European lawyers in those places, would work hardship. Accordingly, only those provisions - which related to the grant of administration to the powers and duties of executors and administr to

Note.—Contn. sheet

GPB—50,000—23-10-05

Serial No.

and other matters dealt with in the Probate and Administration Act, were made applicable to such places. These provisions with such modifications as the circumstances of Mysore may render necessary, may, it is submitted, be introduced here.

8-12-06.

T. Rama Rao
Judge.

No. 3171/165

III Dept. 14.12.06

S.R. Returned with the opinion of the Judges.

13.12.06 For Regr

10) Subd. SW 14/12 11) The opinion of the Judges is not in favour of immediate legislation on the subject now of the Domestic Representative Assembly

J Crawley Chetty
15/12/06

12) I shall be glad if Hon'ble V. P. Madhava Rao & Sheshachari will kindly state question & put up a short draft for legislation on the lines indicated by the Judges of the Chief Court & a Notification by Regd. & Secrs

K S Shivappa
T. Rama Rao

Note—Contn. sheet

GPB—50,000—23-10-05

19/12/06

G.R.S. 12]

General and Revenue Secretariat.

File No. 15 of 1906

Serial No. 13)

A Draft Probate + Admn Regulation, on the lines of Act V of 1881 is submitted herewith with a Statement of Objects + Reasons. As regards the Hindu Wills Act ~~after a careful consideration I have come to the conclusion that~~ it does not seem a desirable at present to legislate on the lines of the Hindu Wills Act. The Judges are not agreed on the point and I have followed the opinion of Mr. Justice Krishna Rao. I have explained my reasons for this course in a short Memorandum put up herewith. Whatever may be the opinions as regards the advisability of legislating on the lines of the Hindu Wills Act a Probate + Admn Regn will be found, it is hoped, very useful by the Courts + the Public.

Has Govt decided to introduce in Council the Bill now?

Sd/ Nagappalachetty
11/6/07

Under Sec. DHS.

Secy

Sec K. Mathiran
11/6

14) Please put up a copy of the Hindu Wills Act.

C.S. Balasundaram
31/8

31/8

15) Sd/ No spare copy of the Act is available in Branch. The Act is published in pages 152 to 153 of the second volume of the Unrepealed Acts of the Governor of India in Council, which is herewith put up.

Secy 2.9.07 K. Mythili

GPB—50,000—23 10-05

3 R.S. 1 SH 9/9/07.

Serial No.

16) Submitted to the Diwan through 188 Cr If the necessity for legislation & the main lines of the draft bill are accepted, then a reference may be made to the Residency announcing that legislation is proposed to be taken up. The bill may then be placed before the Legal Cr in due course. C.S. Barnes CR

15

4-9-1907) The Protector of Emigrants 3/9 3.9
Responsis Wills. & I fail to see why
the Hindu Wills Act should not also
be introduced into Mysore with the
necessary adaptations as suggested
in the Minutes of the late Chief Justice
Moore & of Justice (now Sir) Chief Justice
Nanjundayya. Such an introduction
will have the effect of regulating Wills
& thus saving disputes & litigation
T. Ananda Rao Asst to Dep

16 Br. III
18) Put up a draft wills act also
Dep 3/9 Br

17 Dep 3/9
19) Draft of a Hindu Wills Legislation is 12/9 & 12.9
submitted. Recd this Legislation & to
be introduced. Sec 2 of the draft Probate &
Adm^n Act would seem to require some

NOTE—Contn. sheet

GPB—50,000—23 10-05

Serial No.

Some alteration are the reference to the Hindu Wills Regulation contained therein would have to be retained

2) regarding the draft Probate & Admon Regn omits the saving clause regarding the rights, duties and privileges of the Admon Nator General of Madras. Vide de 14/7 Clause (d) ~~[illegible]~~

As the introduction of a Regulation to recognise the status of the Admon Nator General of Madras is under the consideration of Government this clause may perhaps be retained as has been done in the draft Regn now put up

VR 30/5/07 y.s.s

SR 30/5/07

Recd 1/6/08 SPR

1) Please put up (1) typed copy of the draft Hindu Wills Regn with a statement of objects & reasons. (2) Also a typed copy of the Statement of objects & reasons & the Probate & Admon Regn drafted by me.

S. P. Rajagopa 3/6/08

2) Send with the typed copies of the draft Hindu Wills Regn & of the statements of objects and reasons Report

NOTE—Contn. sheet

G. R. S. 12]
(General and Revenue Secretariat.

Leg File No. 15 of 1906 07

Serial No.

Draft
Hindu Probate & Admn Regulation. A Statement of the objects & reasons to the Draft Hindu Wills Act has been prepared.

SN
22/9/06

VB) In the Draft Hindu Wills Regulation, a provision may be added to the effect that the birth of a posthumous son revokes the will of a Hindu. In a reported case in Madras a person left a will at his death afterwards a posthumous son was born to him. The question came up whether the will was valid or not. Justice Subrahmanya Iyer in a most learned judgment holds that the will must be considered to be revoked but the other two judges held that there was no such provision in the Hindu Wills Act & that though the will in question was made in the instrument the same principles are to be applicable. Justice Subrahmanya Iyer's views seems to be correct & a provision to this effect may be introduced in the Draft

Three reports put up 1905 or 1906. 1 L.R. xxx Mad. 365

NOTE—Contn sheet.

Serial No.

24) The papers relating to the Probate and Administration Act are submitted as personally directed. The papers relating to the Hindu Wills Act have been detached and are being submitted separately. As regards the former, it does not appear that the changes introduced into the British Indian Act 1881 on which the draft prepared is based by Act VIII of 1903 were taken into consideration. The question of incorporation of the changes introduced by that Act as well as by Act IX of 1908 (The B. I. Limitation Act) may be considered perhaps.

(1) Substitution by Act VIII of 1903 of a new proviso to section 57 the old proviso has been omitted in the draft. As the unlimited jurisdiction referred to therein is to be exercised even by the District Judge perhaps the question of incorporating it now may be considered.

25) This would necessitate the addition of Sec" to will" suitable changes, and which is now omitted.

Addition of a new para to

NOTE—Contn. sheet.

GPB—35,000—27-1-09

Serial No.

Hyd

Sections 62, 64 and 65 by Act 8 of 1902.

3. Omission of Sec 156, (numbered in the draft as Sec 145) This has been repealed by Act IX of 1908

Submitted for orders

Y.K.S

20/12/11 SN(11) 21/12/11

H. C.

No. This is necessary for us and should be retained. We had no Probate Act when we consolidated the Civil Act recently

S.H. 22/7/11

25 26) [For instructions from the Councillor on the following points]

(1) Whether it is necessary to confer original jurisdiction under the Act on the Ch Ct Sec. 87 Is not the provision in the Ch. Ct Regn sufficient?

(2) The refer to Public Registry of Wills in Sec 8-4 (79) seems to be unnecessary

may be omitted

S.H.

(3) There is perhaps no harm in retaining the provisions regarding the appointment of "District delegates" as Mofussil people in the Country parts will have to go to Ellpone, Bangalore or Shimoga to obtain a probate ~~in Eng~~ respectively

S.H.

NOTE—Contn. sheet.

G. R. S. 12]
General and Revenue Secretariat.

Legislative File No. 15 of 1906

Serial No.

After enquiry the property left by the ~~testator on the decease testator~~ [To be stated to me after the return of the Commission]

S Herath
22/12/11

~~S Herath~~

27) Recommended for omission [illegible] Govt. Agent
11/1/12 S Wijesinghe

28) Omit 4th

C
Secretary Chamber

29) No D.K.'s 16/1/12 S Wijesinghe

30) Put up draft Bill to Sec

S Obeyesekere

31

16/1/12
H V Perera

6/2/12

15—35,000—27-1-12

G. R. S. 12]
General and Revenue Secretariat.

Legs. File No. 15 of 1906-7

Serial No.

32) submitted with typed Copies of drafts of a Bill to Bi Residency and Statement of Objects and Reasons as revised by the Assistant Secretary

J.K.S. 7/12 (15) SW(11)
1/2/12

33)

34)

(1) Drafts may be appd

(2) In clause 124. of the draft (Sec 127 of the printed Copy) I have substituted the words "as the Ch. A. may by general rule direct" (clause 120) for "Govt Secuties as we have no "Govt Securities" in Myso

SUBJECT. No. 7.

The Probate and Administration Act.

Messrs. C. Subba Rao and S. Sitaramaiya, Shimoga Municipality.

Summary of discussion. The Probate and Administration Act may be introduced into the State, as there is no law at present defining the duties and responsibilities of executors and administrators notwithstanding the increasing practice of making wills.

Reply of Government.—A Bill will soon be framed and placed before the Legislative Council.

---

32) Bill will be placed in the Current file, and has already been drafted.

SW(11)

33) Yes

G. R. S. 12]
General and Revenue Secretariat.

File No.

Serial No.

37) Draft as approved after Dewan

38) Let me see the Rest of the Copy of the Act carefully prepared

14/6/12

39) Submitted. Attention is invited to the last para of Section 61, 63 and 67 of the Act. They have been introduced by an Act of 1908 and hence had not been incorporated in the original Copy of the Draft. Perhaps they have also to be omitted

40) Yes. They have been omitted in the original Copy and incorporated in the present one

20/6/12

41) Submit Copy of Draft as approved after Dewan for signature

21-6-12

For the Dewan

NOTE—Contn. sheet.

GPB—50,000—12-8-10

G. R. S. 12]

General and Revenue Secretariat.

Legis File No. 15 of 1906-07

Serial No.	
1	No. S.O. 529 dated 23/6/12 to the Hon'ble the Resident Mysore. Forwards a copy of the Probate and Administration Bill with a statement of objects and reasons and states that the Bill will be placed before the Mysore Legis. Cl. in due course.
2	No. 3896 dated 8th July 1912 From the F. A. Resident. Informs that there is no prima facie objection to the Bill being placed before the Legis. Council. Secretary's orders Dr. Note for meeting. (To be submitted to the 1st Councillor for information. (Initd) S. H. 9/7 S. HEMA RAJ
4a)	Submitted S.V.S. (Initd) SVS (1) 9/7/12
4b)	Submitted for orders Secretary 11/7/12
4c)	Seen Hon'ble Member in charge 11/7/12
	12/7

NOTE—Contn. sheet.

General and Revenue Secretariat. | Legs File No. 15 of 1906-07

Serial No.

Subd

The report of the Select Committee on the Bill and the Bill as amended by them were placed before the Mysore Legs. council at the meeting dated 14/4/14 and considered by them The amendments re ~~fixing~~ naming the date of the Regn and the date of its commencement were also moved and ~~considered~~ passed and the Bill as thus amended was finally passed at that meeting A copy of the Bill as finally passed is put up. The certificate at the bottom of the Bill has to be filled up and signed by the Dewan after obtaining the sanction of His Highness

S V.S
2/5/14

Secy to Govt

With a draft Rotification

Dewan

I shall return papers

Dewan
1/5

NOTE—Contn. sheet.

GPB—60,000—7-11-13

G. R. S. 12]

General and Revenue Secretariat. Legis File No. 15 of 1906-07.

Serial No.

45) Subn.

Leave to introduce the Bill was granted at the meeting of the Legn. council held on 4/4/13 and the Bill with Statement of Objects and reasons was published in the Gazette. The Bill was read in council on the 15th Sept. 1913 and was referred to a Selct. Committee. The report of the Selct. Committee has been received and published in the Gazette. A copy is herewith put up. The Bill will have to be taken up and passed at the next meeting of the council ie on 14/4/14. Before passing, the date when the Bill comes into effect will have to be ~~...~~ ided in cls para 3 of clause 1. This has to be fixed now.

S V.S
7/4/14

46) 1st July 1914 may be fixed & this date will be entered in the Agenda

~~Dr Ker~~

48 ~~First~~ Secretary

47

48 All right

Secretary
7/4 cla i
Draft gaz Law
8/4

NOTE—Contn. sheet.

GPB—60,000—7-11-13

10/4/14

Submitted to His Highness.

42. ~~5-0~~ The Bill to provide for the grant of Probates of Wills and Letters of Administration to the Estates of certain deceased persons was passed by the Legislative Council at the meeting held on the 14th April 1914.

43 ~~5-0~~ 2. I solicit the sanction of His Highness to the Bill being passed into law.

M. K'Onyonyo -

17 May 1914-

Record of Cases submitted for the Orders of His Highness the Maharaja.

Subject.

Promulgation of the Bill to provide for the grant of Probates of Wills and Letters of Administration to the Estates of certain deceased persons, into Law.

Order.

4452. Sanctioned

~~KRW~~

22/5/14

54. Secretary

23.5.14.

Draft 18/5 2745

55 draft addn

18/5 S. P. Rajagopala Ayyar

G. R. S. 12]

General and Revenue Secretariat. | Legis. File No. 15 of 1906-07

Serial No. 47 146

Subd with a draft order to the compiler Mysore Gazette for publication in Regn as Regn VI of 1914

S.V.S

29/5/14

47 5-8 Issue. let me see final proof

Proof

Corrections shown to the 2nd class

Regn as per 30/5 sheet

3 No 3671 dated 13/6/14 to the compiler, Mysore Gazette

Forwards for publication as Regn VI of 1914 the Probate and Administration B

48 5-8 Submitted The Regn as it appeared in the Mysore Gazette extraordinary on 27-June 1914 and in Part-III of the Gazette on 2/7/14 was again carefully gone through. The following ~~printing mistakes are noticed~~ corrections have to be made

1. Illustration (c) to Sec: 5

Insert the word "my" between the words "my nephew" and "residuary" in the last clause of the first sentence

NOTE—Contn. sheet.

GPB—60,000—25-9-13.

General and Revenue Secretariat.

Legs File No. 15 of 1916-0)

Serial No.

Section 58

~~Substitute the word "has"~~ "

Read "his" for "as" in the last line

~~Section~~

Marginal note to see 148. —

Insert the word "this" between the word "under" and "Regulation"

49 ~~54~~ An erratum notification to this effect is put up.

S.V.S.

21/7/14 NR

50 59/ Done

No J 202 dated 23/7/14 to the Compiler Mysore Gazette directs the publication of an erratum notification

submitted 11 copies of the Regn as usual after the Law to be sent to the Residency. A ~~Sub~~ draft letter put up

48

19/8/14 NR

may be approved

Secy) Approved. Done Earl 11/8/14

Done 16/8

NOTE—Contn. sheet.

GPB—60,000—25-9-13.

G. R. S. 12]

24

General and Revenue Secretariat.

Legis File No. 15 of 1906-07

Serial No.	
5	2 Pol 163 dated 19/8/14 to the J. A. Resident Forwards 11 copies of the Regn

NOTE—Comm. sheet.

G.P.B.—60,000—7-11-13

Legn 15 of 1906-07 vol
Serial 1

General and Revenue Secretariat,

D. O. No. 529/En Leg

23rd June 1912.

To the Hon'ble the Resident in Mysore

I forward herewith a copy of a Bill to provide for the grant of Probates of Wills and of Letters of Administration to the estates of certain deceased persons in Mysore with a statement of objects and reasons explaining the nature and scope of the Bill. [S.C.1]

Under Sections 331 and 332 of the Indian Succession Act 1865, as applied to Mysore by the Government of India Notification ,Foreign Department, No. 203/Judl dated the 23rd July 1868, Hindus, Buddhists, Muhammadans and Native Christians are exempt from the operation of the provisions of that Act. The result is that there is no means at present whereby a complete and conclusive title can be

conferred upon any one as representative of the estates of deceased persons belonging to such classes. It has been represented by the members of the Mysore Representative Assembly that the absence of a law like the draft Regulation has been causing great inconvenience and the Chief Court concurs in this view. The Durbar have therefore considered it expedient to enact a Regulation on the subject based on the Probate and Administration Act, 1881 of British India as amended from time to time. It is proposed to place the Bill before the Mysore Legislative Council at an early date.

13 January

(Dewan)

Col. Sir Hugh Daly, ~~K.C.S.I.~~ K.C.I.E. C.S.I., ~~C.S.I.~~

A.V.

Draft Probate & Admin Reg
~~as~~ sent to the Registrar
with D.no 529 § 23-67

Draft Probate & Administration Bill

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15. Acts not validated by administration.
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18. Procedure where executor renounces or fails to accept within time limited.
19. Grant of administration to universal or residuary legatee.
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21. Grant

STATEMENT OF REPEALS AND AMENDMENTS.

REPEALED IN PART	VII of 1889.
AMENDED	VI of 1883, ss. 11—17.
	II of 1890 16.

The following changes have been made in reprinting :—

(1) repealed matter has been omitted, explanatory notes being inserted ;

(2) amendments made by later Acts have been inserted in their proper places, with explanatory footnotes ;

(3) the number and year of enactments referred to in the text have been noted in the inner margin, except where both appear in the text ;

(4) section-numbers occurring in the text have been printed in figures, instead of in words

(5) lengthy sections have sometimes been divided into clauses and paragraphs ;

(6) the headings to the pages have been amplified ;

(7) some footnotes have been inserted for convenience of reference.

SECTIONS.

21. Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.
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23. To whom administration may be granted.

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(d).—Grants with Exception.

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(e).—Grants of the Rest.

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56. When probate or administration may be granted by District Judge.
57. Disposal of application made to Judge of district in which deceased had no fixed abode.
58. Probate and letters of administration may be granted by Delegate.
59. Conclusiveness

SECTIONS.

59. Conclusiveness of probate or letters of administration.
Effect of unlimited probates, &c., granted by certain Courts.
60. ~~Transmission to other Courts of certificate by Court granting unlimited probate, &c.~~
61. Conclusiveness of application for probate or administration, if properly made and verified.
62. Petition for probate.
63. In what cases translation of will to be annexed to petition.
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64. Petition for letters of administration.
65. ~~Additional statements in petition for probate, &c.~~
66. Petition for probate or administration to be signed and verified.
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CHAPTER XIV.

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ACT No. ~~V OF 1881~~

PASSED BY THE GOVERNOR GENERAL OF INDIA IN COUNCIL.

(*Received the assent of the Governor General on the 21st January, 1881.*)

An ~~Act~~ to provide for the grant of Probates of Wills and Letters of Administration to the estates of certain deceased persons.

[~~As modified up to the 1st July, 1890.~~]

WHEREAS it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865,[b] does not apply; ~~It is hereby enacted as follows:~~—

Preamble.

1865.

His Highness the Maharaja is pleased to enact as follows:—

CHAPTER I.

PRELIMINARY.

1. This ~~Act~~ may be called the Probate and Administration ~~Act, 1881~~.

Short title.

~~It~~ applies to the whole of ~~British India~~;

Local extent.

and it shall come into force on the first day of ~~April, 1881~~.

Commencement.

2. Chapters II to XIII, both inclusive, of this ~~Act~~ shall apply in the case of every Hindu, Muhammadan, Buddhist, and person exempted under section 332 of the Indian Succession Act, 1865,[b] dying before, on or after the said ~~first day of April 1881~~:

Personal application.

X of 1865.

Provided

Act V of 1881 has been declared in force in the town of Mandálay—see Act XX of 1886, s. 6; and in British Baluchistan—see Regulation I of 1890, s. 3. Sections 153 and 154 of the Act have been declared in force in the Sonthal Pergunnahs—see Regulation III of 1872, s. 3, as amended by Regulation III of 1886, s. 2.

The Act has been declared, under the Scheduled Districts Act, 1874, to be in force in the following Scheduled Districts in the Chota Nagpore Division, namely:—the Districts of Hazáríbágh, Lohárdugga and Mánbhoom, and Pergunnah Dhalbhoom and the Kolhan in the District of Singbhoom—see Gazette of India, 22nd October, 1881, Part I, p. 504.

[b] See the revised edition of Act X of 1865 as modified up to the 1st July, 1890, published by the Legislative Department.

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day

Provided also that, except in cases to which the Hindu Wills Act, 1870, applies,[a] XXI

no Court in any local area beyond the limits of the towns of Calcutta, Madras and Bombay and[b] the territories for the time being administered by the Chief Commissioner of British Burma,[b]

and no High Court, in exercise of the concurrent jurisdiction over such local area hereby conferred,

shall receive applications for probate or letters of administration until the Local Government has, with the previous sanction of the Governor-General in Council, by a notification in the official Gazette, authorized it so to do.[c]

3. In

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[a] The Hindu Wills Act, 1870, applies to the wills of Hindus, Jainas, Sikhs and Buddhists in the Lower Provinces of Bengal and in the towns of Madras and Bombay. The Act is printed in the volume of General Acts for 1867-76, Ed. 1887, p. 192.

[b-b] *Read* Lower Burma—see Act XX of 1886, s. 4, in Burma Code, Ed. 1889, p. 364.

[c] The following Courts have been authorised to receive applications for probate and letters of administration within the areas mentioned, namely:—

in Bengal: the High Court at Calcutta, throughout the territories subject to the Lieutenant-Governor of Bengal; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may from time to time appoint as District Delegates—see Calcutta Gazette, 20th April, 1881, Part I, p. 445:

in the Andaman and Nicobar Islands: the Court of the Deputy Superintendent and the Court of the Chief Commissioner—see Gazette of India, 28th May, 1881, Part I, p. 214:

in Assam: the High Court at Calcutta, throughout Assam; all District Judges, as defined in the Act, within the Province; and such Judicial Officers as the High Court may from time to time appoint as District Delegates—see Assam Gazette, 27th August, 1881, Part I, p. 337:

in the Punjab: the Chief Court, throughout the territories administered by the Lieutenant-Governor of the Punjab; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the Chief Court may from time to time appoint as District Delegates—see Punjab Gazette, 6th October, 1881, Part I, p. 483:

in Madras: the High Court at Madras, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the

(*Chapter I.—Preliminary.—Section 3.*)

Interpretation-clause.

3. In this ~~Act,~~ unless there be something repugnant in the subject or context,—

"Province" includes any division of British India having a Court of the last resort: "Province:"

"minor" means ~~any person subject to the Indian Majority Act, 1875, who has not attained his majority within the meaning of that Act,~~ and any other person who has not completed his age of eighteen years; and "minority" means the status of any such person: "minor:" "minority:"

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death: "will:"

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will: "codicil:"

"specific

High Court may from time to time appoint as Delegates—see Fort St. George Gazette, 30th April, 1889, Part I, p. 253:

in the Central Provinces: the Judicial Commissioner, throughout the territories under the administration of the Chief Commissioner; and all Deputy Commissioners within those territories—see Central Provinces Gazette, 18th May, 1889, Part II, p. 91:

in Coorg: the Court of the Judicial Commissioner and the Court of the Commissioner—see Coorg District Gazette, 1st July, 1889, Part I, p. 50:

in Bombay: the High Court at Bombay, throughout the territories subject to the Governor in Council; all District Judges, as defined in the Act, within the said territories; and such Judicial Officers as the High Court may from time to time appoint as District Delegates—see Bombay Government Gazette, 1st August, 1889, Part I, p. 643:

in Ajmere-Merwara: the Court of the Chief Commissioner and the Court of the Commissioner—see Gazette of India, 5th October, 1889, Part II, p. 534:

in the N.-W. Provinces and Oudh: the High Court at Allahabad, throughout the territories subject to the Lieutenant-Governor; the Judicial Commissioner of Oudh, throughout the territories subject to the Chief Commissioner; all District Judges, as defined in the Act, within the N.-W. Provinces and Oudh; and such Judicial Officers as the High Court or the Judicial Commissioner may from time to time appoint as District Delegates—see N.-W. Provinces and Oudh Gazette, 7th December, 1889, Part I, p. 511.

* Printed, General Acts, 1867-76, Ed. 1887, p. 503.

"specific legacy:" "specific legacy" means a legacy of specified property:

"demonstrative legacy:" "demonstrative legacy" means a legacy directed to be paid out of specified property:

"probate:" "probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"executor:" "executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment confided:

"administrator:" "administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor; and

"District Judge" means the judge of a principal civil court of original jurisdiction.

CHAPTER II.[a]

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of the Province, whether in the British dominions or in a foreign country, and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

6. Probate

[a] As to grants of letters of administration and probates to the Administrator General, see Act II of 1874 (the revised edition, as modified up to the 1st July, 1890, published by the Legislative Department), ss. 14-33.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Illustrations.

(*a*) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words :—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to sur-

11. When probate has been granted to several executors, and one of them dies, the entire representation of

viving executor.

of the testator accrues to the surviving executor or executors.

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

Effect of letters of administration.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Acts not validated by administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Grant of administration where executor has not renounced.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship;

Exception.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Form and effect of renunciation of executorship.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Procedure where executor renounces or fails to accept within time limited.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

19. When

Grant of administration to universal or residuary legatee.

19. When the deceased has made a will, but has not appointed an executor, or

when he has appointed an executor who is legally incapable or refuses to act, or has died before the testator, or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased,

deceased, would be entitled to the whole or any part of such deceased's estate

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

OF LIMITED GRANTS.

(*a*).—*Grants limited in Duration.*

f raft or lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of copy where orginal exists.

26. When the will is in the possession of a person, residing out of ~~the Province in which application for probate is made,~~ who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

(*b*).—*Grants*

(*b*).—*Grants for the Use and Benefit of Others having Right.*

Myore

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from ~~the Province in which application is made,~~ and there is no executor within ~~the Province~~ willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Myore

Administration with will annexed to attorney of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from ~~the Province,~~ letters of administration with the will annexed may be granted to his agent, limited as above-mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from ~~the Province~~, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned.

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule[a]

for

Sic. Read "rules"

for the distribution of intestates estates applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration *pendente lite.*

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

(*c*).—*For Special Purposes.*

Probate limited to purpose specified in will.

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Administration with will annexed limited to particular purpose.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration limited to trust-property.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to suit.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit,

suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from ~~the Province within which the Court that has granted the probate or letters of administration is situate~~, such Court may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of ~~the Province~~, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the

gency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made. expired, and still some part of estate unadministered.

CHAPTER IV

Alteration and Revocation of Grants.

48. Errors in names and descriptions, or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly. What errors may be rectified by Court.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly. Procedure where codicil discovered after grant of administration with will annexed.

50. The grant of probate or letters of administration may be revoked or annulled for just cause. Revocation or annulment for just cause.

Explanation.—"Just cause" is— "Just cause."

1st, that the proceedings to obtain the grant were defective in substance ;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case ;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently ;

4th, that the grant has become useless and inoperative through circumstances ;

5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit

[a] The 5th clause of the *Explanation* to s. 50 was added by Act VI of 1889, s. 11.

exhibit an inventory or account in accordance with the provisions of Chapter VII of this Act, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Jurisdiction of District Judge in granting and revoking probates, &c.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The High Court may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious

contentious cases, within such local limits as it may from time to time prescribe :

Provided that, in the case of High Courts not established by Royal Charter, such appointment be made with the previous sanction of the Local Government.

Persons so appointed shall be called "District Delegates."

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person ;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code* in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

55. The

* See the revised edition of the Indian Penal Code published by the Legislative Department in 1890.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.—Sections 55-59.)

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.[a] ~~X of 1877~~ XIV of 1882.

When probate or administration may be granted by District Judge.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

Disposal of application made to Judge of district in which deceased had no fixed abode.

57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Probate and letters of administration may be granted by Delegate.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Conclusiveness of probate or letters of administration.

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable, of the deceased throughout ~~the Province in which the same is granted~~,[b]

and

[a] This reference to Act X of 1877 should now be read as applying to Act XIV of 1882—see s. 3 of the latter Act.

[b] *Insert* or are.

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted :

Effect of unlimited probates, &c., granted by certain Courts.

Provided that probates and letters of administration granted by a High Court established by Royal Charter, or by the Chief Court of the Punjab, or by the Court of the Recorder of Rangoon, shall, unless otherwise directed by the grant, have like effect throughout the whole of British India.

Transmission to other Courts of certificate by Court granting unlimited probate, &c.

60. Whenever a grant of probate or letters of administration is made by a Court with such effect as last aforesaid, the Registrar, or such other officer as the Court making the grant appoints in this behalf, shall send to each of the other Courts empowered to make such grants a certificate to the following effect :—

"I, *A. B.* Registrar [*or as the case may be*] of the High Court of Judicature at [*or as the case may be*], hereby certify that on the day of 188 the High Court of Judicature at [*or as the case may be*] granted probate of the will [*or* letters of administration of the estate] of *C. D* late of deceased, to *E. F.* of and *G. H.* of and that such probate [*or* letters] has [*or* have] effect over all the property of the deceased throughout the whole of British India";

and such certificate shall be sealed by the Court receiving the same.

Conclusiveness of application for probate or

6 The application for probate or letters of administration, if made and verified in the manner hereinafter

administration, if properly made and verified.

inafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Petition for probate.

62. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or in the language in ordinary use in proceedings before the Court in which the application is made, with the will, or, in the cases mentioned in sections 24, 25 and 26, a copy, draft or statement of the contents thereof, annexed, and stating

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

63. In cases wherein the will, copy or draft is written in any language other than English, or ~~that~~ that Rammaswa

~~that in ordinary use in proceedings before the Court~~, there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

64. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Additional statement in petition for probate, &c.

65. Every person applying to any of the Courts mentioned in the proviso to section 59 for probate of a will or letters of administration of an estate, intended to have effect throughout British India, shall state

state in his petition, in addition to the matters respectively required by sections 62 and 64, that to the best of his belief no application has been made to any other Court for a probate of the same will or for letters of administration of the same estate, intended to have such effect as last aforesaid.

or, where any such application has been made, the Court to which it was made, the person or persons by whom it was made, and the proceedings (if any) had thereon

And the Court to which any application is made under the proviso to section 59 may, if it think fit, reject the same

n for probate or administration to be signed and verified.

66. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

67. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

Punishment for false averment in petition or declaration.

68. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes

believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.*

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit, — District Judge may examine petitioner in person,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and — require further evidence,

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. — and issue citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct. — Publication of citation.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; — Caveats against grant of probate or administration.

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

71. The caveat shall be to the following effect:— — Form of caveat.

"Let nothing be done in the matter of the estate of

* See the Indian Penal Code (the revised edition published by the Legislative Department in 1890), Ch. XI.

of *A. B.*, late of deceased, who died on the day of at without notice to *C. D.* of

"

After entry of caveat, no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of adminstration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application leaving the party applying for the grant in questior to make application to the Judge.

Procedure where there is contention

75. In every case in which there is contention, or the District Delegate is of opinion that the probate

or

believes to be false, such person shall be subject to punishment according to the provisions of the law[a] for the time being in force for the punishment of giving or fabricating false evidence.

District Judge may examine petitioner in person,

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

to examine the petitioner in person upon oath, and also

require further evidence,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Caveats against grant of probate or administration.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate;

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Form of caveat.

71. The caveat shall be to the following effect:—

"Let nothing be done in the matter of the estate of

[a] See the Indian Penal Code (the revised edition published by the Legislative Department in 1890), Ch. XI.

believes to be false, such person shall be subject to punishment according to the provisions of the law[a] for the time being in force for the punishment of giving or fabricating false evidence.

69. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit, — District Judge may examine petitioner in person,

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and — require further evidence,

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration. — and issue citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Collector of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct. — Publication of citation.

70. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate; — Caveats against grant of probate or administration.

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and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

71. The caveat shall be to the following effect:— — Form of caveat.

"Let nothing be done in the matter of the estate of

---

[a] See the Indian Penal Code (the revised edition published by the Legislative Department in 1890), Ch. XI.

of *A. B.*, late of deceased, who died on the day of at without notice to *C. D.* of

"

After entry of caveat, no proceeding taken on petition until after notice to caveator.

72. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

District Delegate when not to grant probate or administration.

73. A District Delegate shall not grant probate or letters of adminstration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Power to transmit statement to District Judge in doubtful cases where no contention.

74. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention

75 In every case in which there is contention, or the District Delegate is of opinion that the probate

or

or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge; or District Delegate thinks probate or letters of administration should be refused in his Court.

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

76. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, [a]he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.[a]

The day of

Grant of letters of ad-

77. Whenever it appears to the District Judge or District

[a] These words in s. 76 were substituted for the original words by Act VI of 1889, s. 12.

ministration to be under seal of Court.

District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the father (*or as the case may be*) of the deceased, [a]he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.[a]

The day of 18 "

Administration-bond.

78. Every person to whom any grant of letters of administration is committed, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court, to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

79. The

[a-a] These words in s. 77 were substituted for the original words by Act VI of 1859, s. 13.

(Chapter V.—Of the Practice in granting and revoking Probates and Letters of Administration.—Sections 79-83.)

Assignment of administration-bond.

79. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Time before which probate or administration shall not be granted.

80. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Filing of original wills of which probate or administration with will annexed granted.

81. ~~Until a public registry for wills is established~~ every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him;

and the ~~Local~~ Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

Grantee of probate or administration alone to sue, &c., until same revoked.

82. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout ~~the Province in which the same may have been granted~~, until such probate or letters of administration shall have been recalled or revoked.

Procedure in contentious cases.

83. In any case before the District Judge in which there is contention, the ~~proceedings~~ shall take, as

* *Sic: read* proceedings.

as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure,[a] in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant. ~~XIV of 1882.~~

Payment to executor or administrator before probate or administration revoked.

84. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Right of such executor or administrator to recoup himself.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Power to refuse letters of administration.

85. Notwithstanding anything hereinbefore contained, it shall, ~~except in cases to which the Hindu Wills Act, 1870, applies,~~[b] be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under this ~~Act~~. Regulation ~~XXV of 1870.~~

Appeals from orders of District Judge.

86. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the ~~High~~ Chief Court under the rules contained in the Code of Civil Procedure[a] applicable to appeals. ~~XIV of 1882.~~

Concurrent jurisdiction of ~~High~~ Chief Court.

87. The ~~High~~ Chief Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

CHAPTER VI.

[a] These references to Act X of 1877 should now be read as applying to Act XIV of 1882—see s. 3 of the latter Act.

[b] See first footnote on p. 10, *supra*.

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

88 An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death, as the deceased had when living.

In respect of causes of action surviving deceased, and debts due at death.

89. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action for defamation, assault as defined in the Indian Penal Code,[a] or other personal injuries not causing the death of the party, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

XLV of 1860.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

90.[b] (*1*) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under section 4.

Power of executor or administrator to dispose of property.

(*2*) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction,

[a] See the revised edition of the Indian Penal Code published by the Legislative Department in 1890.

[b] This section was substituted for the original s. 90 by Act VI of 1889, s. 14. For validation of acts under grants of administration made before the commencement of Act VI of 1889, see s. 19 of that Act.

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restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(*3*) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(*a*) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under section 4, or

(*b*) lease any such property for a term exceeding five years.

(*4*) A disposal of property by an executor or administrator in contravention of sub-section (*2*) or sub-section (*3*), as the case may be, is voidable at the instance of any other person interested in the property.

(*5*) Before any probate or letters of administration is or are granted under this ~~Act~~ there shall be endorsed thereon or annexed thereto a copy of sub-sections (*1*), (*2*) and (*4*), or of sub-sections (*1*), (*3*) and (*4*), as the case may be.

(*6*) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize an executor or administrator to act otherwise than in accordance with the provisions of this section.

Purchase by executor or administrator of deceased's property.

91. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exercisable by one.

92. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or grant of letters of

of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*) One of several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, moveable or immoveable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

93. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or grant of letters of administration, vested in the survivors or survivor.

Powers of administrator of effects unadministered.

94. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

95. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

96. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

OF THE DUTIES OF AN EXECUTOR OR ADMINISTRATOR.

As to deceased's funeral ceremonies.

97. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies

monies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

[a]98. (*1*) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(*2*) The ~~High~~ Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(*3*) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under section 176 of the Indian Penal Code,[b] as in the latter case. XLV of 1860.

(*4*) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under section 193 of that Code.[b]

Inventory to include property in any part of British India.

~~99. In all cases where~~ [c]a grant has been made[c] of probate or letters of administration intended to have effect throughout the whole of British India, the executor

[a] This section was substituted for the original s. 98 by Act VI of 1889, s. 15.

[b] See the revised edition of the Indian Penal Code published by the Legislative Department in 1890.

[c-c] These words in s. 99 were substituted for the original words by Act VI of 1889, s. 16.

executor or administrator* shall include in the inventory of the effects of the deceased all his moveable or immoveable property situate in British India;

and the value of such property situate in each Province shall be separately stated in such inventory;

and the probate or letters of administration shall be chargeable with a fee corresponding to the entire amount or value of the property affected thereby wheresoever situate within British India.

97 ~~100~~. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death. As to property of, and debts owing to, deceased.

98 ~~101~~. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts. Expenses to be paid before all debts.

99 ~~102~~. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges. Expenses to be paid next after such expenses.

103. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any). Wages for certain services to be next paid, and then other debts.

104. Save as aforesaid, no creditor is to have a right of priority over another. Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

105. Debts

* This word in s. 99 was substituted for the original words by Act VI of 1889, s. 16.

(*Chapter VII.—Of the Duties of an Executor or Administrator.—Sections 105-110.*)

Debts to be paid before legacies.

105. Debts of every description must be paid before any legacy.

Executor or administrator not bound to pay legacies without indemnity.

106. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Abatement of general legacies.

107. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equall proportions;

Executor not to pay one legatee in preference to another.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Non-abatement of specific legacy when assets sufficient to pay debts.

108. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

109. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Rateable abatement of specific legacies.

110. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Illustration.

(Chapter VII.—Of the Duties of an Executor or Administrator.—Section 111. Chapter VIII.—Of the Executor's Assent to a Legacy.—Sections 112-113.)

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

Legacies treated as general for purpose of abatement.

111. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

CHAPTER VIII.[a]

Of the Executor's Assent to a Legacy.

Assent necessary to complete legatee's title.

112. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(*a*) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

113. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein, and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse

[a] The provisions in Chapter VIII as to an executor apply also to an administrator with the will annexed—see s. 148, *infra*.

horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

ial assent.

114. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

sent of ecutor to his own legacy.

115. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

(Chapter VIII.—Of the Executor's Assent to a Legacy.—Sections 116-117 Chapter IX.—Of the Payment and Apportionment of Annuities.—Sections 118-119.)

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

116. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

117. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.[a]

OF THE PAYMENT AND APPORTIONMENT OF ANNUITIES.

Commencement of annuity when no time fixed by will.

118. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When annuity, to be paid quarterly or monthly, first falls due.

119. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but

[a] The provisions in Chapter IX as to an executor apply also to an administrator with the will annexed—see s. 148, *infra*.

but the executor shall not be bound to pay it till the end of the year.

Date of successive payments when first payment directed to be made within given time, or on day certain.

117 ~~120.~~ Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Apportionment where annuitant dies between times of payment.

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

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CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Investment of sum bequeathed where legacy, not specific, given for life.

118 ~~121.~~ Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the High Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

119 ~~122.~~ Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

120 ~~123.~~ Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a ~~Government annuity of the specified amount shall be purchased,~~ or,

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[a] The provisions in Chapter X as to an executor apply also to an administrator with the will annexed—see s. 148, *infra*.

~~if no such annuity can be obtained then~~ a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the ~~High~~ Court may, by any general rule to be made from time to time, authorize or direct.

Chief

Transfer to residuary legatee of contingent bequest.

124. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Investment of residue bequeathed for life, with direction to invest in specified securities.

125. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Time and manner of conversion and investment.

126. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Interest payable until investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent. per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

127. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee,

~~unless~~

unless the legatee be a ward of the Court of Wards;

and, if the legatee be a ward of the Court of Wards, the legacy shall be paid into that Court to his account;

and such payment into the Court of the District Judge, or into the Court of Wards, as the case may be, shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of Government securities, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge or the Court of Wards, as the case may be, may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

128. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if

if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

129. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

130. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(*1*) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(*2*) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(*3*) Where a sum is bequeathed to a minor with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

131. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time

time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

132. The rate of interest shall be six per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

133. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

134. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.[a]

OF THE REFUNDING OF LEGACIES.

Refund of legacy paid under Judge's orders.

135. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

136. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Refund when legacy becomes due on performance of condition within fur-

137. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second

[a] The provisions in Chapter XII as to an executor apply also to an administrator with the will annexed—sec. 118, *infra*.

second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount. ther time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

138. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion. When each legatee compellable to refund in proportion.

139. Where an executor or administrator has given such notices as the High Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets,[a] or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person of whose claim he has not had notice at the time of such distribution; Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively. Creditor may follow assets.

140. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund [a] whether the assets of the Creditor may call upon legatee to refund.

[a] For limitation of suits to compel a refund, see Act XV of 1877, Sch. II, No. 43, in General Acts, 1877-81, p. 107.

the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

When legatee, not satisfied or compelled to refund under section 140, cannot oblige one paid in full to refund.

141. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When unsatisfied legatee must first proceed against executor, if solvent.

142. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Limit to refunding of one legatee to another.

143. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D. have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

144. The refunding shall, in all cases, be without interest.

Residue after usual payments to be paid to residuary legatee.

145. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

~~145A. Where~~

(*Chapter XII.—On the refunding of Legacies.—Section 145A. Chapter XIII.—Of the Liability of an Executor or Administrator for Devastation.—Section 146.*)

Transfer of assets from British India to executor or administrator in country of domicile for distribution.

[a]145A. Where a person not having his domicile in British India has died leaving assets both in British India and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in British India with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country,

the executor or administrator, as the case may be, in British India, after having given such notices as are mentioned in section 139 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of British India who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.

OF THE LIABILITY OF AN EXECUTOR OR ADMINISTRATOR FOR DEVASTATION.

Liability of executor or administrator for devastation;

146. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*) The

[a] S. 145A was inserted by Act II of 1890, s. 16.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

for neglect to get in any part of property.

147. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Act for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

Provisions applied to administrator with will annexed.

148. In Chapters VIII, IX, X and XII of this Act the provisions as to an executor shall apply also to an administrator with the will annexed.

Saving clause.

149. Nothing herein contained shall—

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid;

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled; or

(*d*) affect the rights, duties and privileges of the Administrator General of Bengal, Madras or Bombay.

Probate and administration in case

150. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindú, Muhammadan,

X of 1865.

Muhammadan, Buddhist or person exempted under section 332 of the Indian Succession Act, 1865,[a] shall be instituted in any Court in ~~British India~~ except under this ~~Act~~.

Exemption of persons exempted from Succession Act, to be granted only under this ~~Act~~.

151. [*Repeal of portions of Act XXVII of 1860.*] *Repealed by Act VII of 1889.*

152. The grant of probate or letters of administration under this Act in respect of any property shall be deemed to supersede any certificate previously granted in respect of the same property under the said Act No. XXVII of 1860,[b] or Bombay Regulation No. VIII of 1827[c]; and when, at the time of the grant of such probate or letters, any suit or other proceeding instituted by the holder of such certificate regarding such property is pending, the person to whom such grant is made shall, on applying to the Court in which such suit or proceeding is pending, be entitled to take the place of such holder in such suit or proceeding:

Grant of probate or administration to supersede certificate under Act XXVII of 1860 or Bombay Regulation VIII of 1827.

Provided that, when any certificate is superseded under this section, all payments made to the holder of such certificate in ignorance of such supersession shall be held good against claims under the probate or letters of administration.

153. [*Amendment of Court-fees Act.*] *Repealed by Act VII of 1889.*

154. The following amendments shall be made in the Hindu Wills Act, 1870[d] (namely):—

XXI of 1870.

Amendment of Hindu Wills Act, 1870.

(*a*) for the portion of section 2 commencing with the words "sections one hundred and seventy-nine" and ending with the words "administrator with the will annexed," the words "and section one hundred and eighty-seven" shall be substituted;

(*b*) the

[a] See the revised edition of Act X of 1865, as modified up to the 1st July, 1890, published by the Legislative Department.

[b] Act XXVII of 1860 has been repealed by Act VII of 1889, but see saving in s. 2 of the latter Act.

[c] Printed, Bombay Code, Ed. 1880, p. 7.

[d] Printed, General Acts, 1867-76, Ed. 1887, p. 192.

DRAFT PROBATE AND
ADMINISTRATION REGULATION.

Statement of objects and reasons.

The attention of the Government has been drawn to the absence of any enactment in the State corresponding to the British Indian Probate and Administration Act (V of 1881) applicable to cases not falling within the scope of the Indian Succession Act as ~~extended~~ applied to Mysore. The ~~Indian Succession Act~~ enactment has a very limited ~~operation~~ operation in Mysore. as it does not apply to Hindus, Mahomedans. Buddhist or even Native Christians. As the Law at present stands, there is no means of conferring upon any one a complete and conclusive title as representative of the estate of a deceased person to whomthe Succession Act does not appl This state of things often causes great inconvenience. Though wills are gradually coming into use, there are no facilities for proving them or for the due administration of the property. The Executor under a Will has no representative status as such To prove the Will, he must have recourse to a regular

suit

suit or obtain under the Succession Certificate Regulation of 1906, a certificate which is operative only for certain very limited purposes. Cases have come before the Courts where difficulty has been experienced owing to want of provisions for granting probate of Wills or Letters of Administration to the estates of deceased persons. Moreover, there is no guarantee that the executor or administrator discharges the duties entrusted to him, properly. In case of his making default in the performance of his duties, he can now be made to answer for it only by a regular suit at the instance of the injured parties. In the absence of provisions for granting letters of Administration, the settlement of claims against the estate and its distribution among heirs and creditors may give rise to avoidable litigation. These deficiencies are proposed to be removed by the enactment of a probate and Administration Regulation.

2. The facilities provided by the Draft Regulation are the following:-

(1) A simple procedure is prescribed for the grant of Probates and Letters of Administrat

(2) A representative status is conferred on admisnistrators and executors; and they are enabled to give a valid discharge for payment of debts made by the debtors of the deceased.

(3) Powers (~~somewhat restricted in the case of administrators~~), are conferred on executors & administrators as regards the beneficial disposal of the property of the deceased.

The draft Regulation also provides safeguards for the proper discharge of their duties by executors and administrators. The administrator and the executor ~~if so desired~~, if the court so direct must execute a bond with one or more sureties engaging for the due admisnistration of the property of the deceased. They must file an inventory of the property within six months and a detailed account later on.

3. The draft Regulation does not curtail or extend the power of disposing of property by will possessed by the members of the communities to which it applies nor does it interfere with the rights of maintenance otherwise chargeable on the estates of the deceased.

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It

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It may be added that the draft Regulation is of a permissive nature and does not render it obligatory that probates should be obtained before the validity of a will is established.

Public Offices

Bangalore

Dated March 1913

To

M Visvesvaraya Esq^r B.A., L.C.E., M.Inst.C.E.

Dewan of Mysore.

SIR,

I beg to request your sanction in writing under Section 12 of Regulation I of 1907, for introducing a bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons

at a meeting of the Mysore Legislative Council.

I have the honor to be,
Sir,
Your most obedient servant,

H Mariyappa

Member

S[illegible]

OFFICE OF THE DEWAN OF MYSORE.

Dated.....190

Mr. H.V. Nanjundayya, M.A., M.L., Member of the Mysore Legislative Council, is hereby permitted to introduce a bill to provide for the grant of Probates and Letters of administration to the estates of certain deceased persons

at a meeting of the said Council, subject to the rules for the time being in force under the Mysore Legislative Council Regulation, No. I of 1907.

M. Visvesvaraya

Dewan of Mysore.

3. 4. 13

Please type the statement of objects and reasons

26/4/13

G.R.S. 26]

File No.

Serial No.

Diary No. of letter replied to

Notification

No. 79

L. C

General and Revenue Secretariat

( )

the *19*

~~To~~

Under rule 31 of the Rules for the conduct of business of the Mysore Legislative council, the following Bill to provide for the grant of Probate of Wills and Letters of Administration to the Estates of certain deceased persons, is published for general information with the Statement of Objects and Reasons.

Date of issue 26/4/13

Signed by Mr S. P. Rajagopalachari

need not be typed

To the Translation Section for needful

5/6/13

Shd be typed. May 2

By order

Secretary, Mysore Legislature

over.

~~SUBJECT.~~

To the compiler Mysore Gazette for publication in Part IV of the Gazette in English and Kannada and for supplying 100 spare copies in English and 50 in Kannada

copy to 26/4

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G.R.S. 26]

24/3 Reg. Notice of the Rules

Office of the Secretary Mysore Legislative Council

File No.

Serial No.

Diary No. of letter replied to

Notification No. 293 L.C.

General and Revenue Secretariat

( )

, the 19 .

~~To~~

Under Rule 40 of the Rules for the conduct of busines of the Mysore Legislative Council, the following Report of the select committee appointed to consider the Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons, is published for general information

By order over

for Secretary Mysore Legl. C.

of issue 24/3/14

Signed by Mr S. P. Rajagopalachar

SUBJECT.

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[Here print the accompanying Report]

To

The Compiler Mysore Gazette for publication in Part III of the Gazette in English and Kannada and to forward 100 copies in English and 50 in Kannada to this Office

Report of the Select Committee on the Bill to provide for the gran of probates of wills and letters of administration to the estates of certain deceased persons.

We, the members of the above Committee, have the honour to state that we have carefully considered the Bill.

The only alteration of importance is in clause 87 of the Bill. The express mention of certain causes of action only as exceptions would unsettle the law as understood at present, and introduce uncertainty as to cases not mentioned, and so we have substituted more general phraseology, leaving it to the courts to apply the rules of law in force intact words substituted are except causes of action that are of a strictly personal nature or do not survive under any rule of law" for the words "except causes of action for defamation, assault as defined in the Indian Penal Code as in force in Mysore, or other personal injuries not causing the death of the part-"

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The other alterations made by us are of a purely ver
al nature.

Some members of the Committee were at first inclined to ~~doubt~~ doubt the necessity for the measure; but after considering all the provisions in detail, we are all agreed that it would be a useful enactment and may be passed into law.

As the Bill has not been materially altered, it need not be republished in the Gazette.

H. V. Nanjundayya
Sreekanteswara Aiyar
C. S. Doraswami Iyer
B. Narasinga Rao

Note by Mr. C. Sreenivasaiengar
I Approved the report with the observation that there is something in the Bill that promises to be beneficial while there seems to nothing in it that threatens to be harmful Mysore is not in urgent need of this measure, but all the same it would at least not be any the worse for it

L.L.

C. Sreenivasaiengar

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NOTIFICATION.

No. 79—L. C., dated the 28th April 1913.

Under Rule 31 of the Rules for the conduct of business of the Mysore Legislative Council, the following Bill to provide for the grant of probates of wills and letters of administration to the estates of certain deceased persons, is published for general information with the statement of objects and reasons.

By Order,
S. P. RAJAGOPALACHARI,
Secretary, Mysore Legislative Council.

(As amended by the Select Committee

approved
19 3/14

[Note: Then the several
verbal corrections in
S. 6 29, 33, 54, 91, 96, 101, 107,
which we made while
going through the draft
& they are considered
unimportant they may
be left. 1/1]
19 3/14

The Probate and Administration Bill.

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A Bill to provide for the grant of Probates of Wills and Letters of Administration to the Estates of certain deceased persons.

Preamble.

Whereas it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, as applied to Mysore by Government of India Notification, Foreign Department, No. 203, Judicial, dated 23rd July 1868, does not apply; His Highness the Maharaja is pleased to enact as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Regulation may be called "The Probate and Administration Regulation, 19 ."

Local extent.

It applies to the whole of Mysore.

Commencement.

And it shall come into force on the first day of

Personal application.

2. Chapters II to XIII, both inclusive, of this Regulation shall apply in the case of every Hindu, Muhammadan, Buddhist and person exempted under section 332 of the Indian Succession Act, 1865, as applied to Mysore, dying before, on or after the said

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that no Court shall receive applications for probate or letters of administration until the Government has, by a notification in the official Gazette, authorized it so to do.

Interpretation-clause.

3. In this Regulation, unless there be something repugnant in the subject or context,—

"minor:" "minority:"

"minor" means any person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"will:"

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"codicil:"

"specific legacy" means a legacy of specified property:

"specific legacy:"

"demonstrative legacy" means a legacy directed to be paid out of specified property:

"demonstrative legacy:"

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

"probate:"

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided: and

"executor:"

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor.

"administrator."

CHAPTER II.

OF GRANT OF PROBATE AND LETTERS OF ADMINISTRATION.

Section 179, *Indian Succession Act* 1865.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

Character and property of executor or administrator as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Section 180, *Indian Succession Act* 1865.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of Mysore and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Administration with copy annexed of authenticated copy of will proved abroad.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Section 181, *Indian Succession Act.*

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Section 182, *Indian Succession Act.*

Illustrations.

(*a*) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." [illegible]

(*c*) A appoints several persons executors of his will and codicils, and his nephew my residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils, signed of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Section 183, *Indian Succession Act.*

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Section 184, *Indian Succession Act.*

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Section 185, *Indian Succession Act.*

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

Section 186, *Indian Succession Act.*

Effect of probate.

12. Probate of a will when granted establishes the will from the death of the

Section 188, *Indian Succession Act.*

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when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

Section 197 *Indian Succession Act.*

Right to administration of representative of deceased residuary legatee.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Section 198, *Indian Succession Act.*

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Section 199, *Indian Succession Act.*

Citation before grant of administration to legatee other than universal or residuary.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Sections 200-207, *Indian Succession Act.*

To whom administration may be granted.

23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

Of limited Grants.

(a) Grants limited in Duration.

Probate of copy or draft of lost will.

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced. *Section* 208, *Indian Succession Act.*

Probate of contents of lost or destroyed will.

25. When the will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence. *Section* 209, *Indian Succession Act.*

Probate of copy where original exists.

26. When the will is in the possession of a person, residing out of Mysore, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original, probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced. *Section* 210, *Indian Succession Act.*

Administration until will produced.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced. *Section* 211, *Indian Succession Act.*

(b) Grants for the Use and Benefit of Others having Right.

Administration with will annexed to attorney of absent executor.

28. When any executor is absent from Mysore and there is no executor within Mysore willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself. *Section* 212, *Indian Succession Act.*

Administration with will annexed to ~~attorney~~ of absent person, who, if present, would be entitled to administer.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from Mysore, letters of administration with the *Section* 213, *Indian Succession Act.*

the agent

will annexed may be granted to his agent, limited as above mentioned.

Administration to attorney of absent person entitled to administer in case of intestacy.

30. When a person entitled to administration in case of intestacy is absent from Mysore, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned. *Section* 214, *Indian Succession Act.*

Administration during minority of sole executor or residuary legatee.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him. *Section* 215, *Indian Succession Act.*

Administration during minority of several executors or residuary legatees.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority. *Section* 216, *Indian Succession Act.*

Administration for use and benefit of lunatic.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be. *Section* 217 *Indian Succession Act.*

Administration *pendente lite.*

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall *Section* 218, *Indian Succession Act.*

be subject to the immediate control of the Court and shall act under its direction.

(c) *For special Purposes.*

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Probate limited to purpose specified in will.

Section 219, *Indian Succession Act.*

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration with will annexed limited to particular purpose.

Section 220, *Indian Succession Act.*

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to trust-property.

Section 221, *Indian Succession Act.*

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to suit.

Section 222, *Indian Succession Act.*

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from Mysore, the Court that has granted the probate or letters of administration may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

Section 223, *Indian Succession Act.*

being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Section 224, *Indian Succession Act.*

Administration limited to collection and preservation of deceased's property.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Section 225, *Indian Succession Act.*

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of Mysore, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d) Grants with Exception.

Section 226, *Indian Succession Act.*

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Section 227, *Indian Succession Act.*

Administration with exception.

43. Whenever the nature of the case requires that an exception be made letters of administration shall be granted subject to such exception.

(e) Grants of the Rest.

Section 228, *Indian Success*

Probate or administration of rest.

44. Whenever a grant with exception, of probate, or letters of administration with or without the will annex-

ed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f) Grants of Effects Unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate. *Section* 229, *Indian Succession Act.*

Grant of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made. *Section* 230, *Indian Succession Act.*

Rules as to grants of effects unadministered.

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made. *Section* 231, *Indian Succession Act.*

Administration when limited grant expired, and still some part of estate unadministered.

CHAPTER IV.

Alteration and Revocation of Grants.

48. Errors in names and descriptions or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly. *Section* 232, *Indian Succession Act.*

What errors may be rectified by Court.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly. *Section* 233, *Indian Succession Act.*

Procedure where codicil discovered after grant of administration with will annexed.

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Rules as to grants of effects unadministered.

Section 230, *Indian Succession Act.*

47. When a limited grant has expired by effluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

Section 231, *Indian Succession Act.*

CHAPTER IV.

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What errors may be rectified by Court.

Section 232, *Indian Succession Act.*

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

Section 233, *Indian Succession Act.*

Section 234, *Indian Succession Act.*

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

Revocation or annulment for just cause.

"Just cause."

Explanation.—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances;

5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Regulation, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B, as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V.

OF THE PRACTICE IN GRANTING AND REVOKING PROBATES AND LETTERS OF ADMINISTRATION.

Section 235, *Indian Succession Act.*

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Jurisdiction of District Judge in granting and revoking probates, etc.

Section 235 *A*, *Indian Succession Act.*

Power to appoint Delegate of District Judge to deal with non-contentious cases.

52. The Government may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Persons so appointed shall be called "District Delegates."

Section 236, *Indian Succession Act.*

District Judge's powers as to grant of probate and administration.

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

Section 237, *Indian Succession Act.*

District Judge may order person to produce testamentary papers.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, ~~as in force in~~ Mysore, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

Section 238, *Indian Succession Act*

Proceedings of District Judge's Court in relation to probate and administration.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, moveable or immoveable, within the jurisdiction of the Judge.

When probate or administration may be granted by District Judge.

Section 240, *Indian Succession Act.*

57. When the application is made to the Judge of a district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Disposal of application made to Judge of district in which deceased had no fixed abode.

Section 241, *Indian Succession Act.*

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Probate and letters of administration may be granted by Delegate.

Section 241*A*, *Indian Succession Act.*

59. Probate or letters of administration shall have effect over all the property, moveable or immoveable of the deceased throughout Mysore,

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

Conclusiveness of probate or letters of administration.

Section 242, *Indian Succession Act.*

60. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of pro-

Conclusiveness of application for probate or administration, if properly made and verified.

Section 243, *Indian Succession Act.*

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bate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Section 244, Indian Succession Act.

Petition for probate.

61. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or Kannada ~~in the language in ordinary use in proceedings before the Court in which the application is made,~~ with the will, or, in the cases mentioned in Sections 24, 25 and 26, a copy, draft or statement of the contents thereof, annexed, and stating—

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and,

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Section 245, Indian Succession Act.

In what cases translation of will to be annexed to petition.

62. In cases wherein the will, copy or draft is written in any language, other than English, or Kannada,

there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will,

Verification of translation by person other than Court translator.

copy or draft be in any other language, then by any person competent to translate the same,

in which case such translation shall be verified by that person in the following manner:—

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

63. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating— *Section* 246, *Indian Succession Act.*

Petition for letters of administration.

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars, the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

64. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect :— *Section* 247, *Indian Succession Act.*

Petition for probate or administration to be signed and verified.

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

65. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following :— *Section* 248, *Indian Succession Act.*

Verification of petition for probate by one witness to will.

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

66. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the *Section* 249, *Indian Succession Act.*

Punishment for false averment in petition of declaration.

provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Section 250, *Indian Succession Act.*

67. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

District Judge may examine petitioner in person,

to examine the petitioner in person upon oath, and also

require further evidence,

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

and issue citations to inspect proceedings.

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

Publication of citation.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Deputy Commissioner of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Section 251, *Indian Succession Act*

68. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate;

Caveats against grant of probate or administration.

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

Section 252, *Indian Succession Act.*

69. The caveat shall be to the following effect:—

Form of caveat.

"Let nothing be done in the matter of the estate of *A. B.*, late of , deceased, who died on the day of at , without notice to *C. D.* of

Section 253, *Indian Succession Act.*

70. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom

After entry of caveat, no proceeding taken on petition until after notice to caveator.

the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

Section 253*A*, *Indian Succession Act.*

District Delegate when not to grant probate or administration.

71. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

Section 253 *B*, *Indian Succession Act.*

Power to transmit statement to District Judge in doubtful cases where no contention.

72. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Section 253 *C*, *Indian Succession Act.*

Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

73. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge;

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Section 254, *Indian Succession Act.*

Grant of probate to be under seal of Court.

74. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

I Judge of the District of [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The day of , 19 "

Section 255, *Indian Succession Act.*

Grant of letters of administration to be under seal of Court.

75. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed, should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, (*as the case may be*) of the property and credits of late of , deceased, were granted to , the father (or *as the case may be*) of the deceased, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as

the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The day of 19 "

Section 256, *Indian Succession Act.*

Administration bond.

76. Every person to whom ~~any grant of letters of administration is committed~~ are granted, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court, to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

Section 257, *Indian Succession Act.*

Assignment of administration bond.

77. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

Section 258, *Indian Succession Act.*

Time before which probate or administration shall not be granted.

78. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Section 259, *Indian Succession Act.*

Filing of original wills of which probate or administration with will annexed granted.

79. Every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him;

and the Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

80. After any grant of probate or letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout Mysore, until such probate or letters of administration shall have been recalled or revoked.

Grantee of probate or administration alone to sue, etc., until same revoked.

Section 260, *Indian Succession Act.*

81. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Procedure in contentious cases.

Section 261, *Indian Succession Act.*

82. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Payment to executor or administrator, before probate or administration revoked.

Section 262, *Indian Succession Act.*

and the executor or administrator, who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself.

83. Notwithstanding anything hereinbefore contained, it shall be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under the Regulation.

Power to refuse letters of administration.

84. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the Chief Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Appeals from orders of District Judge.

Section 263, *Indian Succession Act.*

85. The Chief Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

Concurrent jurisdiction of Chief Court.

Section 264, *Indian Succession Act.*

CHAPTER VI.

OF THE POWERS OF AN EXECUTOR OR ADMINISTRATOR.

86. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death as the deceased had when living.

In respect of causes of action surviving deceased, and debts due at death.

Section 267, *Indian Succession Act*

87. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, ~~except causes of action for defamation, assault as defined in the Indian Penal Code as in force in Mysore, or other personal injuries not causing the death of the party,~~ and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

Section 268, *Indian Succession Act.*

except causes of action that are of a strictly personal nature or do not survive under any rule of law

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

88. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under Section 4.

Power of executor or administrator to dispose of property.

Section 269, *Indian Succession Act.*

(2) The power of an executor to dispose of immoveable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an

order in writing, notwithstanding the restriction, to dispose of any immoveable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,--

(*a*) mortgage, charge or transfer by sale, gift, exchange or otherwise any immoveable property for the time being vested in him under Section 4, or

(*b*) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Regulation there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorize as executor or administrator to act otherwise than in accordance with the provisions of this section.

Section 270, *Indian Succession Act.*

Purchase by executor or administrator of deceased's property.

89. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Section 271, *Indian Succession Act.*

Powers of several executors or administrators exercisable by one.

90. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in will or ~~grant of~~ the / letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*) One of several executors has power to release a debt due to the deceased.

(*b*) One has power to surrender a lease.

(*c*) One has power to sell the property of the deceased, moveable or immoveable.

(*d*) One has power to assent to a legacy.

(*e*) One has power to endorse a promissory note payable to the deceased.

(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

91. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or ~~grant of~~ letters of administration, vested in the survivors or survivor.

Survival of powers on death of one of several executors or administrators.

Section 272, *Indian Succession Act.*

92. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator of effects unadministered.

Section 273, *Indian Succession Act.*

93. An administrator during minority has all the powers of an ordinary administrator.

Powers of administrator during minority.

Section 274, *Indian Succession Act.*

94. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

Powers of married executrix or administratrix.

Section 275, *Indian Succession Act.*

CHAPTER VII.

Of the Duties of an Executor or Administrator.

95. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

As to deceased's funeral ceremonies.

Section 276, *Indian Succession Act.*

96. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

Inventory and account.

Section 277, *Indian Succession Act.*

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The Chief Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under Section 176 of the Indian Penal Code, ~~as in force in Mysore~~.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under Section 193 of that Code.

97. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

As to property of, and debts owing to, deceased.

Section 278, *Indian Succession Act.*

98. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

Expenses to be paid before all debts.

Section 279, *Indian Succession Act.*

99. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, ~~or~~ to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

Section 280, *Indian Succession Act.*

100. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

Section 281, *Indian Succession Act.*

101. Save as aforesaid, no creditor is to have a right of priority over another.

Save as aforesaid, all debts to be paid equally and rateably.

But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Section 282, *Indian Succession Act.*

102. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

Section 285, *Indian Succession Act.*

103. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

Section 286, *Indian Succession Act.*

104. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

Section 287, *Indian Succession Act.*

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another

105. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

Section 288, *Indian Succession Act.*

106. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

Section 289, *Indian Succession Act.*

107. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts. *Section* 290, *Indian Succession Act*..

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator, and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

108. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies. *Section* 291, *Indian Succession Act*

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

Of the Executor's Assent to a Legacy.

109. The assent of the executor is necessary to complete a legatee's title to his legacy. *Section* 292, *Indian Succession Act.*

Assent necessary to complete legatee's title.

Illustrations.

(*a*) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B a right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

110. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein and to transfer the subject of the bequest to the legatee, unless the nature of the circumstances of the property require that it shall be transferred in a particular way. *Section* 293, *Indian Succession Act*

Effect of executor's assent to specific legacy.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Nature of assent.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party purposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Section 294, *Indian Succession Act.*

111. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Conditional assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Section 295, *Indian Succession Act.*

112. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Assent of executor to his own legacy.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Implied assent.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

113. The assent of the executor to a legacy gives effect to it from the death of the testator

Section 296, *Indian Succession Act.*

Effect of executor's assent.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

114. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Section 297, *Indian Succession Act.*

Executor when to deliver legacies.

Illusiration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX

Of the Payment and Apportionment of Annuities.

115. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

Section 298, *Indian Succession Act.*

Commencement of annuity when no time fixed by will.

116. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

Section 299, *Indian Succession Act.*

When annuity, to be paid quarterly or monthly, first falls due.

117. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a

Section 300, *Indian Succession Act.*

Date of successive payments when first payment directed to be made within given time, or on day certain.

day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Apportionment where annuitant dies between times of payment.

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

OF THE INVESTMENT OF FUNDS TO PROVIDE FOR LEGACIES.

Investment of sum bequeathed where legacy, not specific, given for life.

118. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the Chief Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Section 301, *Indian Succession Act.*

Investment of general legacy, to be paid at future time.

119. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Section 302. *Indian Succession Act.*

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

Procedure when no fund charged with, or appropriated to, annuity.

120. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the Chief Court may, by any general rule to be made from time to time, authorize or direct.

Section 303, *Indian Succession Act.*

Transfer to residuary legatee of contingent bequest.

121. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Section 304, *Indian Succession Act.*

Section 306, *Indian Succession Act.*

Investment of residue bequeathed for life, with direction to invest in specified securities.

122. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Section 307, *Indian Succession Act.*

Time and manner of conversion and investment.

123. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit:

Interest payable until investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Section 308, *Indian Succession Act.*

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

124. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, and such payment into the Court of the District Judge shall be a sufficient discharge for the money so paid;

and such money, when paid in, shall be invested in the purchase of such securities, as the Chief Court may by general rule direct, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge may direct.

CHAPTER XI.

Section 309, *Indian Succession Act.*

OF THE PRODUCE AND INTEREST OF LEGACIES.

Legatee's title to produce of specific legacy.

125. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeaths his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Section 310, *Indian Succession Act.*

Residuary legatee's title to produce of residuary fund.

126. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeaths the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

127. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death. *Section* 311, *Indian Succession Act.*

Interest when no time fixed for payment of general legacy.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor, with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

128. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate. *Section* 312, *Indian Succession Act.*

Interest when time fixed.

Exception.—Where the testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

129. The rate of interest shall be six per cent per annum. *Section* 313, *Indian Succession Act.*

Rate of interest.

130. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity. *Section* 314, *Indian Succession Act.*

No interest on arrears of annuity within first year after testator's death.

131. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator. *Section* 315, *Indian Succession Act.*

Interest on sum to be invested to produce annuity.

CHAPTER XII.

Of the refunding of Legacies.

132. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event *Section* 316, *Indian Succession Act.*

Refund of legacy paid under Judge's orders.

of the assets proving insufficient to pay all the legacies.

133. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

Section 317, *Indian Succession Act.*

No refund if paid voluntarily.

134. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Section 318, *Indian Succession Act.*

Refund when legacy becomes due on performance of condition within further time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled befor the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject-matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

Section 124, *Indian Succession Act.*

135. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

Section 319, *Indian Succession Act.*

When each legatee compellable to refund in proportion.

136. Where an executor or administrator has given such notices as the Chief Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claism, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person, of whose claim he has not had notice at the time of such distribution;

Section 320, *Indian Succession Act.*

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof, in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

137. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Section 321, *Indian Succession Act.*

Creditor may call upon legatee to refund.

138. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy or who has been compelled to refund, under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

Section 322, *Indian Succession Act.*

When legatee, not satisfied or compelled to refund under Section 137, cannot oblige one paid in full to refund.

139. If the assets were not sufficient to satisfy all the legacies at the time of the testators death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

Section 323, *Indian Succession Act.*

When unsatisfied legatee must first proceed against executor, if solvent.

140. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Section 324, *Indian Succession Act.*

Limit to refunding of one legatee to another.

Illustration.

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

141. The refunding shall, in all cases, be without interest.

Refunding to be without interest.

Section 325, *Indian Succession Act.*

142. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Residue after usual payments to be paid to residuary legatee.

Section 326, *Indian Succession Act.*

143. Where a person not having his domicile in Mysore has died leaving assets both in Mysore and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in Mysore with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country the executor or administrator, as the case may be, in Mysore after having given such notices as are mentioned in Section 136 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of Mysore who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

Transfer of assets from Mysore to executor or administrator in country of domicile for distribution.

Section 326*A*, *Indian Succession Act.*

CHAPTER XIII.

Of the Liability of an Executor or Administrator for Devastation.

144. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Liability of executor or administrator for devastation;

Section 327, *Indian Succession Act.*

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

145. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount. *Section* 328, *Indian Succession Act.*

For neglect to get in any part of property.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Regulation for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

146. In Chapters VIII, IX, X and XII of this Regulation the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

147. Nothing herein contained shall—

Saving-clause.

(*a*) validate any testamentary disposition which would otherwise have been invalid;

(*b*) invalidate any such disposition which would otherwise have been valid; or,

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled.

148. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Mahomedan, Buddhist or person exempted under Section 332 of the Indian Succession Act, 1865, as applied to Mysore, shall be instituted in any Court in Mysore except under this Regulation.

Probate and administration in case of persons exempted from Succession Act, to be granted only under Regulation.

149. In the first schedule to the Mysore Limitation Regulation, 1911, No. 43, after the figures "321," the following shall be inserted, namely,—"or under the Probate and Administration Regulation, , Section 136 or 137."

Amendment of Limitation Regulation, 1911.

150. (1) When a grant of probate or letters of administration is revoked or annulled under this Regulation, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

Surrender of revoked probate or letters of administration.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

Section 333, *Indian Succession Act.*

Statement of Objects and Reasons.

The attention of the Government has been drawn to the absence of any enactment in the State corresponding to the British Indian Probate and Administration Act (V of 1881), applicable to cases not falling within the scope of the Indian Succession Act as applied to Mysore. This enactment has a very limited operation in Mysore, as it does not apply to Hindus, Mahomedans, Buddhists or even Native Christians. As the law at present stands, there is no means of conferring upon any one a complete and conclusive title as representative of the estate of a deceased person to whom the Succession Act does not apply. This state of things often causes great inconvenience. Though wills are gradually coming into use, there are no facilities for proving them or for the due administration of the property. The executor under a will has no representative status as such. To prove the will, he must have recourse to a regular suit or obtain under the Succession Certificate Regulation of 1901, a certificate which is operative only for certain very limited purposes. Cases have come before the Courts where difficulty has been experienced owing to want of provisions for granting probate of wills or letters of administration to the estates of deceased persons. Moreover, there is no guarantee that the executor or administrator discharges the duties entrusted to him, properly. In case of his making default in the performance of his duties, he can now be made to answer for it only by a regular suit at the instance of the injured parties. In the absence of provisions for granting letters of administration the settlement of claims against the estate and its distribution among heirs and creditors may give rise to avoidable litigation. These deficiencies are proposed to be removed by the enactment of a Probate and Administration Regulation.

2. The important facilities provided by the draft Regulation are the following:—

(1) A simple procedure is prescribed for the grant of probates and letters of administration.

(2) A representative status is conferred on administrators and executors: and they are enabled to give a valid discharge for payment of debts made by the debtors of the deceased.

(3) Powers are conferred on executors and administrators as regards the beneficial disposal of the property of the deceased.

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The draft Regulation also provides safe-guards for the proper discharge of their duties by executors and administrators. The administrator and, if the Court so direct, the executor, must execute a bond with one or more sureties engaging for the due administration of the property of the deceased. They must file an inventory of the property within six months and a detailed account later on.

3. The draft Regulation does not curtail or extend the power of disposing of property by will possessed by the members of the communities to which it applies nor does it interfere with the rights of maintenance otherwise chargeable on the estates of the deceased.

It may be added that the draft Regulation is of a permissive nature and does not render it obligatory that probates should be obtained before the validity of a will is established.

(c) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

145. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount. *Section* 328, *Indian Succession Act.*

For neglect to get in any part of property.

Illustrations.

(a) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(b) The executor neglects to sue for a debt till the debtor is able to plead the Regulation for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

MISCELLANEOUS.

146. In Chapters VIII, IX, X and XII of this Regulation the provisions as to an executor shall apply also to an administrator with the will annexed.

Provisions applied to administrator with will annexed.

147. Nothing herein contained shall—

Saving-clause.

(a) validate any testamentary disposition which would otherwise have been invalid;

(b) invalidate any such disposition which would otherwise have been valid; or,

(c) deprive any person of any right of maintenance to which he would otherwise have been entitled.

148. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Mahomedan, Buddhist or person exempted under Section 332 of the Indian Succession Act, 1865, as applied to Mysore, shall be instituted in any Court in Mysore except under this Regulation.

Probate and administration in case of persons exempted from Sucession Act, to be granted only under Regulation.

THE MYSORE RESIDENCY,

Bangalore 1912

My dear Dewan Sahib,

I am desired to acknowledge the receipt of your D.O. letter No. 529, dated the 23rd June 1912, forwarding a copy of the Mysore Probate and Administration Bill and, in reply, to say that there is no prima facie objection to the Bill being laid before the Legislative Council.

Yours Sincerely

T. Ananda Row, Esq., C.I.E.,

Dewan of Mysore.

G.R.S. 28]

ab

1/6

Legs

File No. 15-06

Serial No 3

Diary No. of letter replied to

Proceedings of the Government of His Highness the Maharaja of Mysore.

GENERAL AND REVENUE SECRETARIAT.

( )

READ—

, *the* 19

Date of issue 13/6/14

Signed by M.N.P. Rajagopalachari

Dewan Cowncler, Mysore

ORDER THEREON.—No. 36718 Secy, Govt 13-6-14

Ordered that the Bill accompanying Regulation viz. the Probate and Administration Regulation which received the assent of His

over.

SUBJECT.

GPB—10,000-29-9-10

Highness the Maharaja on the 22nd May 1914, be published, for general information, in ~~Part III of~~ the Mysore Gazette as Regulation No VII of 1914.

Sd/-

For Secretary to Govt

20

The Compositor Mysore Gazette for publication in Part III of the Gazette in English and Kannada and for supplying 200 copies in English and 100 in Kannada to this Office and 200 copies in English and 100 in Kannada to the Curator, Govt Central Book Depot, Bangalore

Proofs should be sent to this Office before publication

NR

29/5

247

G. R. S. 26]

Diary No. of letter replied to

General and Revenue Secretariat

( )

, the 191

Date of issue 23.7.14

Signed by Mr Secretariat

ady (Legs File No. 15-06

Serial No

~~Correction~~ Notification

No. 202 dy 23-7-14

To

Errata

In the Probate and Administration Regulation No VI of 1914, published in the ~~the~~ Mysore Gazette Extraordinary dated 27th June 1914 and in Part-IV of the Mysore Gazette dated 2nd July 1914 the following corrections shall be made:-

Illustration (c) to sec: 5 -

Insert the word "my" between the words "my nephew

over.

SUBJECT.

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and residuary" in the last clause of the first sentence

Section 5-8

Read "his" for "as" in the last line.

~~Section~~ Marginal Note to sec: 148. —

Insert the word "this" between the words "under" and "Regulation"

By order

for Secretary to Govt

do

The Comptr Mysore Gazette for publication in English — Part III of the Mysore Gazette ~~and~~

~~[illegible]~~

List of enclosures,

Copied by [illegible] 17-7

Examined by

GPB—25,000—4-3-13

G. R. S. 26] 17/8

X.

Legis File No. 15-06

Serial No. 5

Diary No. of letter replied to

P.S No. 143/a11.

General and Revenue Secretariat

( )

, *the* 191 .

To

The J A Resident in
Mysore, Bangalore

Date of issue 19. 8 1914.

Sir

Signed by Mr. D. M. Narasimha Rao

I am directed to forward herewith 11 copies of the ~~Regulation to further amend the Mysore~~ Probate and Administration Regn VI of 1914 and to request you to be so good as to forward two copies of the same to His Highness the Nizam's Govt

I have &c

over

Dtd 16/8

for Secretary to Govt

SUBJECT.

MR 10.8.14

11/8

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EOR

THE PROBATE AND ADMINISTRATION REGULATION,

REGULATION No. VI OF 1914.

Price Annas 5-9.

The Probate and Administration Regulation.

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REGULATION No. VI OF 1914.

(Received the assent of His Highness the Maharaja on the 22nd day of May 1914.)

A Regulation to provide for the grant of Probates of Wills and Letters of Administration to the Estates of certain deceased persons.

Preamble.

Whereas it is expedient to provide for the grant of probate of wills and letters of administration to the estates of deceased persons in cases to which the Indian Succession Act, 1865, as applied to Mysore by Government of India Notification, Foreign Department, No. 203, Judicial, dated 23rd July 1868, does not apply; His Highness the Maharaja is pleased to enact as follows:—

CHAPTER I.

PRELIMINARY.

Short title.

1. This Regulation may be called "The Probate and Administration Regulation, 1914."

Local extent.

It applies to the whole of Mysore.

Commencement.

And it shall come into force on the first day of July 1914.

'ersonal application.

2. Chapters II to XIII, both inclusive, of this Regulation shall apply in the case of every Hindu, Muhammadan, Buddhist and person exempted under Section 332 of the Indian Succession Act, 1865, as applied to Mysore, dying before, on or after the said first day of July 1914.

Provided that nothing herein contained shall be deemed to render invalid any transfer of property duly made before that day:

Provided also that no Court shall receive applications for probate or letters of administration until the Government has, by a notification in the official Gazette, authorized it so to do.

Interpretation clause.

3. In this Regulation, unless there be something repugnant in the subject or context,—

"minor." "minority."

"minor" means any person who has not completed his age of eighteen years; and "minority" means the status of any such person:

"will."

"will" means the legal declaration of the intentions of the testator with respect to his property, which he desires to be carried into effect after his death:

"codicil."

"codicil" means an instrument made in relation to a will, and explaining, altering or adding to its dispositions. It is considered as forming an additional part of the will:

"specific legacy."

"specific legacy" means a legacy of specified property:

"demonstrative legacy."

"demonstrative legacy" means a legacy directed to be paid out of specified property:

probate.

"probate" means the copy of a will certified under the seal of a Court of competent jurisdiction, with a grant of administration to the estate of the testator:

executor."

"executor" means a person to whom the execution of the last will of a deceased person is, by the testator's appointment, confided: and

"administrator" means a person appointed by competent authority to administer the estate of a deceased person when there is no executor.

"administrator."

CHAPTER II.

Of Grant of Probate and Letters of Administration.

Character and property of executor or administrator as such.

4. The executor or administrator, as the case may be, of a deceased person, is his legal representative for all purposes, and all the property of the deceased person vests in him as such.

But nothing herein contained shall vest in an executor or administrator any property of a deceased person which would otherwise have passed by survivorship to some other person.

Administration with copy annexed of authenticated copy of will proved abroad.

5. When a will has been proved and deposited in a Court of competent jurisdiction situated beyond the limits of Mysore and a properly authenticated copy of the will is produced, letters of administration may be granted with a copy of such copy annexed.

Probate only to appointed executor.

6. Probate can be granted only to an executor appointed by the will.

Appointment express or implied.

7. The appointment may be express or by necessary implication.

Illustrations.

(*a*) A wills that C be his executor if B will not. B is appointed executor by implication.

(*b*) A gives a legacy to B and several legacies to other persons, among the rest to his daughter-in-law, C, and adds, "but should the within-named C be not living, I do constitute and appoint B my whole and sole executrix." C is appointed executrix by implication.

(*c*) A appoints several persons executors of his will and codicils, and his nephew residuary legatee, and in another codicil are these words:—"I appoint my nephew my residuary legatee to discharge all lawful demands against my will and codicils signed, of different dates." The nephew is appointed an executor by implication.

Persons to whom probate cannot be granted.

8. Probate cannot be granted to any person who is a minor or is of unsound mind.

Grant of probate to several executors simultaneously or at different times.

9. When several executors are appointed, probate may be granted to them all simultaneously or at different times.

Illustration.

A is an executor of B's will by express appointment, and C an executor of it by implication. Probate may be granted to A and C at the same time, or to A first and then to C, or to C first, then to A.

Separate probate of codicil discovered after grant of probate.

10. If a codicil be discovered after the grant of probate, a separate probate of that codicil may be granted to the executor, if it in no way repeals the appointment of executors made by the will.

Procedure when different executors appointed by codicil.

If different executors are appointed by the codicil, the probate of the will must be revoked, and a new probate granted of the will and the codicil together.

Accrual of representation to surviving executor.

11. When probate has been granted to several executors, and one of them dies, the entire representation of the testator accrues to the surviving executor or executors.

12. Probate of a wil when granted establishes the will from the death of the testator, and renders valid all intermediate acts of the executor as such.

Effect of probate.

To whom administration may not be granted.

13. Letters of administration cannot be granted to any person who is a minor or is of unsound mind.

14. Letters of administration entitle the administrator to all rights belonging to the intestate as effectually as if the administration had been granted at the moment after his death.

Effect of letters of administration.

15. Letters of administration do not render valid any intermediate acts of the administrator tending to the diminution or damage of the intestate's estate.

Acts not validated by administration.

16. When a person appointed an executor has not renounced the executorship, letters of administration shall not be granted to any other person until a citation has been issued calling upon the executor to accept or renounce his executorship :

Grant of administration where executor has not renounced.

except that, when one or more of several executors has or have proved a will, the Court may, on the death of the survivor of those who have proved, grant letters of administration without citing those who have not proved.

Exception.

17. The renunciation may be made orally in the presence of the Judge, or by a writing signed by the person renouncing, and when made shall preclude him from ever thereafter applying for probate of the will appointing him executor.

Form and effect of renunciation of executorship.

18. If the executor renounce, or fail to accept, the executorship within the time limited for the acceptance or refusal thereof, the will may be proved and letters of administration with a copy of the will annexed may be granted to the person who would be entitled to administration in case of intestacy.

Procedure where executor renounces or fails to accept within time limited.

19. When the deceased has made a will, but has not appointed an executor, or

Grant of administration to universal or residuary legatee.

when he has appointed an executor who is legally incapable or refuses to act, or has died, before the testator or before he has proved the will, or

when the executor dies after having proved the will, but before he has administered all the estate of the deceased,

an universal or a residuary legatee may be admitted to prove the will, and letters of administration with the will annexed may be granted to him of the whole estate, or of so much thereof as may be unadministered.

20. When a residuary legatee who has a beneficial interest survives the testator, but dies before the estate has been fully administered, his representative has the same right to administration with the will annexed as such residuary legatee.

Right to administration of representative of deceased residuary legatee.

21. When there is no executor and no residuary legatee or representative of a residuary legatee, or he declines or is incapable to act, or cannot be found, the person or persons who would be entitled to the administration of the estate of the deceased if he had died intestate, or any other legatee having a beneficial interest, or a creditor, may be admitted to prove the will, and letters of administration may be granted to him or them accordingly.

Grant of administration where no executor, nor residuary legatee, nor representative of such legatee.

22. Letters of administration with the will annexed shall not be granted to any legatee other than an universal or a residuary legatee, until a citation has been issued and published in the manner hereinafter mentioned, calling on the next-of-kin to accept or refuse letters of administration.

Citation before grant of administration to legatee other than universal or residuary.

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23. When the deceased has died intestate, administration of his estate may be granted to any person who, according to the rules for the distribution of the estate of an intestate applicable in the case of such deceased, would be entitled to the whole or any part of such deceased's estate.

To whom administration may be granted.

When several such persons apply for administration, it shall be in the discretion of the Court to grant it to any one or more of them.

When no such person applies, it may be granted to a creditor of the deceased.

CHAPTER III.

Of limited Grants.

(*a*) *Grants limited in Duration.*

24. When the will has been lost or mislaid since the testator's death, or has been destroyed by wrong or accident and not by any act of the testator, and a copy or the draft of the will has been preserved, probate may be granted of such copy or draft, limited until the original or a properly authenticated copy of it be produced.

Probate of copy or draft of lost will.

25. When the will has been lost or destroyed, and no copy has been made nor the draft preserved, probate may be granted of its contents, if they can be established by evidence.

Probate of contents of lost or destroyed will.

26. When the will is in the possession of a person, residing out of Mysore, who has refused or neglected to deliver it up, but a copy has been transmitted to the executor, and it is necessary for the interests of the estate that probate should be granted without waiting for the arrival of the original probate may be granted of the copy so transmitted, limited until the will or an authenticated copy of it be produced.

Probate of copy where original exists.

27. Where no will of the deceased is forthcoming, but there is reason to believe that there is a will in existence, letters of administration may be granted, limited until the will or an authenticated copy of it be produced.

Administration until will produced.

(*b*) *Grants for the Use and Benefit of Others having Right.*

28. When any executor is absent from Mysore and there is no executor within Mysore willing to act, letters of administration with the will annexed may be granted to the agent of the absent executor, for the use and benefit of his principal, limited until he shall obtain probate or letters of administration granted to himself.

Administration with will annexed to agent of absent executor.

29. When any person to whom, if present, letters of administration with the will annexed might be granted, is absent from Mysore, letters of administration with the will annexed may be granted to his agent, limited as above mentioned.

Administration with will annexed to agent of absent person, who, if present, would be entitled to administer.

30. When a person entitled to administration in case of intestacy is absent from Mysore, and no person equally entitled is willing to act, letters of administration may be granted to the agent of the absent person, limited as before-mentioned.

Administration to agent of absent person entitled to administer in case of intestacy.

31. When a minor is sole executor or sole residuary legatee, letters of administration with the will annexed may be granted to the legal guardian of such minor, or to such other person as the Court shall think fit, until the minor has attained his majority, at which period, and not before, probate of the will shall be granted to him.

Administration during minority of sole executor or residuary legatee.

32. When there are two or more minor executors and no executor who has attained majority, or two or more residuary legatees and no residuary legatee who has attained majority, the grant shall be limited until one of them has attained his majority.

Administration during minority of several executors or residuary legatees.

33. If a sole executor or a sole universal or residuary legatee, or a person who would be solely entitled to the estate of the intestate according to the rule for the distribution of intestates' estates applicable in the case of the deceased, be a minor or lunatic, letters of administration with or without the will annexed, as the case may be, shall be granted to the person to whom the care of his estate has been committed by competent authority, or, if there be no such person, to such other person as the Court thinks fit to appoint, for the use and benefit of the minor or lunatic, until he attains majority or becomes of sound mind, as the case may be.

Administration for use and benefit of minor or lunatic.

34. Pending any suit touching the validity of the will of a deceased person, or for obtaining or revoking any probate or any grant of letters of administration, the Court may appoint an administrator of the estate of such deceased person, who shall have all the rights and powers of a general administrator, other than the right of distributing such estate; and every such administrator shall be subject to the immediate control of the Court and shall act under its direction.

Administration *pendente lite*.

(*c*) *For Special Purposes.*

35. If an executor be appointed for any limited purpose specified in the will, the probate shall be limited to that purpose, and, if he should appoint an agent to take administration on his behalf, the letters of administration with the will annexed shall accordingly be limited.

Probate limited to purpose specified in will.

36. If an executor appointed generally give an authority to an attorney to prove a will on his behalf, and the authority is limited to a particular purpose, the letters of administration with the will annexed shall be limited accordingly.

Administration with will annexed limited to particular purpose.

37. Where a person dies, leaving property of which he was the sole or surviving trustee, or in which he had no beneficial interest on his own account, and leaves no general representative, or one who is unable or unwilling to act as such, letters of administration, limited to such property, may be granted to the beneficiary, or to some other person on his behalf.

Administration limited to trust-property.

38. When it is necessary that the representative of a person deceased be made a party to a pending suit, and the executor or person entitled to administration is unable or unwilling to act, letters of administration may be granted to the nominee of a party in such suit, limited for the purpose of representing the deceased in the said suit, or in any other suit which may be commenced in the same or in any other Court between the parties, or any other parties, touching the matters at issue in the said suit, and until a final decree shall be made therein and carried into complete execution.

Administration limited to suit.

39. If, at the expiration of twelve months from the date of any probate or letters of administration, the executor or administrator to whom the same has or have been granted is absent from Mysore, the Court that has granted the probate or letters of administration may grant to any person whom it thinks fit letters of administration limited to the purpose of becoming and being made a party to a suit to be brought against the executor or administrator, and carrying the decree which may be made therein into effect.

Administration limited to purpose of becoming party to suit to be brought against executor or administrator.

40. In any case in which it appears necessary for preserving the property of a deceased person, the Court within whose district any of the property is situate may grant, to any person whom such Court thinks fit, letters of administration limited to the collection and preservation of the

Administration limited to collection and preservation of deceased's property.

property of the deceased, and giving discharges for debts due to his estate, subject to the directions of the Court.

Appointment, as administrator, of person other than one who under ordinary circumstances would be entitled to administration.

41. When a person has died intestate, or leaving a will of which there is no executor willing and competent to act, or where the executor is, at the time of the death of such person, resident out of Mysore, and it appears to the Court to be necessary or convenient to appoint some person to administer the estate or any part thereof other than the person who under ordinary circumstances would be entitled to a grant of administration, the Judge may, in his discretion, having regard to consanguinity, amount of interest, the safety of the estate and probability that it will be properly administered, appoint such person as he thinks fit to be administrator;

and in every such case letters of administration may be limited or not as the Judge thinks fit.

(d) Grants with Exception.

Probate or administration with will annexed subject to exception.

42. Whenever the nature of the case requires that an exception be made, probate of a will or letters of administration with the will annexed shall be granted subject to such exception.

Administration with exception.

43. Whenever the nature of the case requires that an exception be made, letters of administration shall be granted subject to such exception.

(e) Grants of the Rest.

Probate or administration of rest.

44. Whenever a grant with exception, of probate, or letters of administration with or without the will annexed, has been made, the person entitled to probate or administration of the remainder of the deceased's estate may take a grant of probate or letters of administration, as the case may be, of the rest of the deceased's estate.

(f) Grants of Effects Unadministered.

Grant of effects unadministered.

45. If the executor to whom probate has been granted has died leaving a part of the testator's estate unadministered, a new representative may be appointed for the purpose of administering such part of the estate.

Rules as to grants of effects unadministered.

46. In granting letters of administration of an estate not fully administered, the Court shall be guided by the same rules as apply to original grants, and shall grant letters of administration to those persons only to whom original grants might have been made.

Administration when limited grant expired, and still some part of estate unadministered.

47. When a limited grant has expired by efluxion of time, or the happening of the event or contingency on which it was limited, and there is still some part of the deceased's estate unadministered, letters of administration shall be granted to those persons to whom original grants might have been made.

CHAPTER IV.

Alteration and Revocation of Grants.

What errors may be rectified by Court.

48. Errors in names and descriptions or in setting forth the time and place of the deceased's death, or the purpose in a limited grant, may be rectified by the Court, and the grant of probate or letters of administration may be altered and amended accordingly.

49. If, after the grant of letters of administration with the will annexed, a codicil be discovered, it may be added to the grant on due proof and identification, and the grant altered and amended accordingly.

Procedure where codicil discovered after grant of administration with will annexed.

50. The grant of probate or letters of administration may be revoked or annulled for just cause.

Revocation or annulment for just cause.

"Just cause." *Explanation.*—"Just cause" is—

1st, that the proceedings to obtain the grant were defective in substance;

2nd, that the grant was obtained fraudulently by making a false suggestion, or by concealing from the Court something material to the case;

3rd, that the grant was obtained by means of an untrue allegation of a fact essential in point of law to justify the grant, though such allegation was made in ignorance or inadvertently;

4th, that the grant has become useless and inoperative through circumstances;

5th, that the person to whom the grant was made has wilfully and without reasonable cause omitted to exhibit an inventory or account in accordance with the provisions of Chapter VII of this Regulation, or has exhibited under that Chapter an inventory or account which is untrue in a material respect.

Illustrations.

(*a*) The Court by which the grant was made had no jurisdiction.

(*b*) The grant was made without citing parties who ought to have been cited.

(*c*) The will of which probate was obtained was forged or revoked.

(*d*) A obtained letters of administration to the estate of B, as his widow, but it has since transpired that she was never married to him.

(*e*) A has taken administration to the estate of B, as if he had died intestate, but a will has since been discovered.

(*f*) Since probate was granted, a later will has been discovered.

(*g*) Since probate was granted, a codicil has been discovered which revokes or adds to the appointment of executors under the will.

(*h*) The person to whom probate was, or letters of administration were, granted, has subsequently become of unsound mind.

CHAPTER V

Of the Practice in granting and revoking Probates and Letters of Administration.

51. The District Judge shall have jurisdiction in granting and revoking probates and letters of administration in all cases within his district.

Jurisdiction of District Judge in granting and revoking probates, etc.

52. The Government may, from time to time, appoint such judicial officers within any district as it thinks fit to act for the District Judge as Delegates to grant probate and letters of administration in non-contentious cases, within such local limits as it may from time to time prescribe:

Power to appoint Delegate of District Judge to deal with non-contentious cases.

Persons so appointed shall be called "District Delegates."

53. The District Judge shall have the like powers and authority in relation to the granting of probate and letters of administration, and all matters connected therewith, as are by law vested in him in relation to any civil suit or proceeding depending in his Court.

District Judge's powers as to grant of probate and administration.

54. The District Judge may order any person to produce and bring into Court any paper or writing being or purporting to be testamentary, which may be shown to be in the possession or under the control of such person;

District Judge may order person to produce testamentary papers.

and if it be not shown that any such paper or writing is in the possession or under the control of such person, but there is reason to believe that he has the knowledge of any such paper or writing, the Court may direct him to attend for the purpose of being examined respecting the same,

and he shall be bound to answer such questions as may be put to him by the Court, and, if so ordered, to produce and bring in such paper or writing, and shall be subject to the like punishment under the Indian Penal Code, in case of default in not attending or in not answering such questions or not bringing in such paper or writing, as he would have been subject to in case he had been a party to a suit, and had made such default,

and the costs of the proceeding shall be in the discretion of the Judge.

55. The proceedings of the Court of the District Judge, in relation to the granting of probate and letters of administration, shall, except as hereinafter otherwise provided, be regulated, so far as the circumstances of the case will admit, by the Code of Civil Procedure.

Proceedings of District Judge's Court in relation to probate and administration.

56. Probate of the will or letters of administration to the estate of a deceased person may be granted by the District Judge under the seal of his Court, if it appears by a petition, verified as hereinafter mentioned, of the person applying for the same that the testator or intestate, as the case may be, had at the time of his decease a fixed place of abode, or any property, movable or immovable, within the jurisdiction of the Judge.

When probate or administration may be granted by District Judge.

57. When the application is made to the Judge of the district in which the deceased had no fixed abode at the time of his death, the Judge may in his discretion refuse the application, if in his judgment it could be disposed of more justly or conveniently in another district, or, where the application is for letters of administration, grant them absolutely, or limited to the property within his own jurisdiction.

Disposal of application made to Judge of district in which deceased had no fixed abode.

58. Probate and letters of administration may, upon application for that purpose to any District Delegate, be granted by him in any case in which there is no contention, if it appears by petition (verified as hereinafter mentioned) that the testator or intestate, as the case may be, at the time of his death had his fixed place of abode within the jurisdiction of such Delegate.

Probate and letters of administration may be granted by Delegate.

59. Probate or letters of administration shall have effect over all the property, movable or immovable of the deceased throughout Mysore,

Conclusiveness of probate or letters of administration.

and shall be conclusive as to the representative title against all debtors of the deceased, and all persons holding property which belongs to him,

and shall afford full indemnity to all debtors paying their debts, and all persons delivering up such property to the person to whom such probate or letters of administration shall have been granted.

60. The application for probate or letters of administration, if made and verified in the manner hereinafter mentioned, shall be conclusive for the purpose of authorizing the grant of probate or administration, and no such grant shall be impeached by reason that the testator or intestate had no fixed place of abode, or no property within the district at the time of his death, unless by a proceeding to revoke the grant if obtained by a fraud upon the Court.

Conclusiveness of application for probate or administration, if properly made and verified.

61. Application for probate or for letters of administration with the will annexed shall be made by a petition distinctly written in English or Kannada with the will, or, in the cases men-

Petition for probate.

tioned in Sections 24, 25 and 26, a copy draft or statement of the contents thereof, annexed, and stating—

the time of the testator's death,

that the writing annexed is his last will and testament, or as the case may be,

that it was duly executed,

the amount of assets which are likely to come to the petitioner's hands;

and, where the application is for probate, that the petitioner is the executor named in the will.

In addition to these particulars, the petition shall further state,

when the application is to the District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

In what cases translation of will to be annexed to petition.

62. In cases wherein the will, copy or draft is written in any language other than English or Kannada,

there shall be a translation thereof annexed to the petition by a translator of the Court, if the language be one for which a translator is appointed; or, if the will, copy or draft be in any other language, then by any person competent to translate the same, in which case such translation shall be verified by that person in the following manner:—

Verification of translation by person other than Court translator.

"I (*A. B.*) do declare that I read and perfectly understand the language and character of the original, and that the above is a true and accurate translation thereof."

Petition for letters of administration.

63. Application for letters of administration shall be made by petition distinctly written as aforesaid, and stating—

the time and place of the deceased's death,

the family or other relatives of the deceased, and their respective residences,

the right in which the petitioner claims,

the amount of assets which are likely to come to the petitioner's hands.

In addition to these particulars, the petition shall further state,

when the application is to a District Judge, that the deceased at the time of his death had a fixed place of abode or had some property situate within the jurisdiction of the Judge; and

when the application is to a District Delegate, that the deceased at the time of his death had a fixed place of abode within the jurisdiction of such Delegate.

Petition for probate or administration to be signed and verified.

64. The petition for probate or letters of administration shall in all cases be subscribed by the petitioner and his pleader, if any, and shall be verified by the petitioner in the following manner or to the like effect:—

"I (*A. B.*), the petitioner in the above petition, declare that what is stated therein is true to the best of my information and belief."

Verification of petition for probate by one witness to will.

65. Where the application is for probate, or for letters of administration with the will annexed, the petition shall also be verified by at least one of the witnesses to the will (when procurable), in the manner or to the effect following:—

"I (*C. D.*), one of the witnesses to the last will and testament of the testator mentioned in the above petition, declare that I was present and saw the said testator affix his signature (*or* mark) thereto (*as the case may be*) (*or* that the said testator acknowledged the writing annexed to the above petition to be his last will and testament in my presence)."

66. If any petition or declaration which is hereby required to be verified contains any averment which the person making the verification knows or believes to be false, such person shall be subject to punishment according to the provisions of the law for the time being in force for the punishment of giving or fabricating false evidence.

Punishment for false averment in petition of declaration.

67. In all cases it shall be lawful for the District Judge or District Delegate, if he thinks fit,

District Judge may examine petitioner in person.

to examine the petitioner in person upon oath, and also

to require further evidence of the due execution of the will, or the right of the petitioner to the letters of administration, as the case may be, and

require further evidence,

to issue citations calling upon all persons claiming to have any interest in the estate of the deceased to come and see the proceedings before the grant of probate or letters of administration.

and issue citations to inspect proceedings.

The citation shall be fixed up in some conspicuous part of the Court-house, and also in the office of the Deputy Commissioner of the district, and otherwise published or made known in such manner as the Judge or Delegate issuing the same may direct.

Publication of citation.

68. Caveats against the grant of probate or letters of administration may be lodged with the District Judge or a District Delegate;

Caveats against grant of probate or administration.

and, immediately on any caveat being lodged with any District Delegate, he shall send a copy thereof to the District Judge;

and, immediately on a caveat being entered with the District Judge, a copy thereof shall be given to the District Delegate, if any, within whose jurisdiction it is alleged the deceased had his fixed place of abode at the time of his death, and to any other Judge or District Delegate to whom it may appear to the District Judge expedient to transmit the same.

69. The caveat shall be to the following effect:—

Form of caveat.

"Let nothing be done in the matter of the estate of *A. B.*, late of deceased, who died on the day of at without notice to *C. D.* of

70. No proceeding shall be taken on a petition for probate or letters of administration after a caveat against the grant thereof has been entered with the Judge or District Delegate to whom the application has been made, or notice thereof has been given of its entry with some other Delegate, until after such notice to the person by whom the same has been entered as the Court shall think reasonable.

After entry of caveat, no proceeding taken on petition until after notice to caveator.

71. A District Delegate shall not grant probate or letters of administration in any case in which there is contention as to the grant, or in which it otherwise appears to him that probate or letters of administration ought not to be granted in his Court.

District Delegate when not to grant probate or administration.

Explanation.—By "contention" is understood the appearance of any one in person, or by his recognized agent, or by a pleader duly appointed to act on his behalf, to oppose the proceeding.

72. In every case in which there is no contention, but it appears to the District Delegate doubtful whether the probate or letters of administration should or should not be granted, or when any question arises in relation to the grant, or application for the grant, of any probate or letters of administration, the District Delegate may, if he thinks proper, transmit a statement of the matter in question to the District Judge, who may direct the District

Power to transmit statement to District Judge in doubtful cases where no contention.

Delegate to proceed in the matter of the application, according to such instructions as to the Judge may seem necessary, or may forbid any further proceeding by the District Delegate in relation to the matter of such application, leaving the party applying for the grant in question to make application to the Judge.

Procedure where there is contention or District Delegate thinks probate or letters of administration should be refused in his Court.

73. In every case in which there is contention, or the District Delegate is of opinion that the probate or letters of administration should be refused in his Court, the petition, with any documents that may have been filed therewith, shall be returned to the person by whom the application was made, in order that the same may be presented to the District Judge;

unless the District Delegate thinks it necessary, for the purposes of justice, to impound the same, which he is hereby authorized to do; and in that case the same shall be sent by him to the District Judge.

Grant of probate to be under seal of Court.

74. Whenever it appears to the Judge or District Delegate that probate of a will should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I. , Judge of the District of , [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of in the year the last will of , late of , a copy whereof is hereunto annexed, was proved and registered before me, and that administration of the property and credits of the said deceased, and in any way concerning his will, was granted to , the executor in the said will named, he having undertaken to administer the same and to make a full and true inventory of the said property and credits and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The day of 19 "

Grant of letters of administration to be under seal of Court.

75. Whenever it appears to the District Judge or District Delegate that letters of administration to the estate of a person deceased, with or without a copy of the will annexed should be granted, he shall grant the same under the seal of his Court in manner following:—

Form of such grant.

"I, , Judge of the District of [*or* Delegate appointed for granting probate or letters of administration in (*here insert the limits of the Delegate's jurisdiction*)] hereby make known that on the day of letters of administration (with *or* without the will annexed, *as the case may be*) of the property and credits of , late of , deceased, were granted to , the son (or *as the case may be*) of the deceased, he having undertaken to administer the same, and to make a full and true inventory of the said property and credits, and exhibit the same in this Court within six months from the date of this grant or within such further time as the Court may from time to time appoint, and also to render to this Court a true account of the said property and credits within one year from the same date or within such further time as the Court may from time to time appoint.

The day of 19 "

Administration bond.

76. Every person to whom letters of administration are granted, and, if the Judge so direct, any person to whom probate is granted, shall give a bond to the Judge of the District Court, to enure for the benefit of the Judge for the time being, with one or more surety or sureties, engaging for the due collection, getting in, and administering the estate of the deceased, which bond shall be in such form as the Judge from time to time by any general or special order directs.

77. The Court may, on application made by petition and on being satisfied that the engagement of any such bond has not been kept,

Assignment of administration bond.

and upon such terms as to security, or providing that the money received be paid into Court, or otherwise as the Court may think fit,

assign the same to some proper person,

who shall thereupon be entitled to sue on the said bond in his own name as if the same had been originally given to him instead of to the Judge of the Court, and shall be entitled to recover thereon, as trustee for all persons interested, the full amount recoverable in respect of any breach thereof.

78. No probate of a will shall be granted until after the expiration of seven clear days, and no letters of administration shall be granted until after the expiration of fourteen clear days, from the day of the testator or intestate's death.

Time before which probate or administration shall not be granted.

79. Every District Judge and District Delegate shall file and preserve among the records of his Court all original wills of which probate or letters of administration with the will annexed may be granted by him;

Filing of original wills of which probate or administration with will annexed granted.

and the Government shall make regulations for the preservation and inspection of the wills so filed as aforesaid.

80. After any grant of probate letters of administration, no other than the person to whom the same shall have been granted shall have power to sue or prosecute any suit, or otherwise act as representative of the deceased, throughout Mysore, until such probate or letters of administration shall have been recalled or revoked.

Grantee of probate or administration alone to sue, etc., until same revoked.

81. In any case before the District Judge in which there is contention, the proceedings shall take, as nearly as may be, the form of a suit, according to the provisions of the Code of Civil Procedure, in which the petitioner for probate or letters of administration, as the case may be, shall be the plaintiff, and the person who may have appeared as aforesaid to oppose the grant shall be the defendant.

Procedure in contentious cases.

82. Where any probate is, or letters of administration are, revoked, all payments *bonâ fide* made to any executor or administrator under such probate or administration before the revocation thereof shall, notwithstanding such revocation, be a legal discharge to the person making the same;

Payment to executor or administrator before probate or administration revoked.

and the executor or administrator who shall have acted under any such revoked probate or administration may retain and reimburse himself out of the assets of the deceased in respect of any payments made by him which the person to whom probate or letters of administration shall be afterwards granted might have lawfully made.

Right of such executor or administrator to recoup himself.

83. Notwithstanding anything hereinbefore contained, it shall be in the discretion of the Court to make an order refusing, for reasons to be recorded by it in writing, to grant any application for letters of administration made under the Regulation.

Power to refuse letters of administration.

84. Every order made by a District Judge or District Delegate by virtue of the powers hereby conferred upon him shall be subject to appeal to the Chief Court under the rules contained in the Code of Civil Procedure applicable to appeals.

Appeals from orders of District Judge.

85. The Chief Court shall have concurrent jurisdiction with the District Judge in the exercise of all the powers hereby conferred upon the District Judge.

Concurrent jurisdiction of Chief Court.

CHAPTER VI

Of the Powers of an Executor or Administrator.

In respect of causes of action surviving deceased, and debts due at death.

86. An executor or administrator has the same power to sue in respect of all causes of action that survive the deceased, and may exercise the same powers for the recovery of debts due to him at the time of his death as the deceased had when living.

Demands and rights of suit of or against deceased survive to and against executor or administrator.

87. All demands whatsoever, and all rights to prosecute or defend any suit or other proceeding, existing in favour of or against a person at the time of his decease, survive to and against his executors or administrators, except causes of action that are of a strictly personal nature or do not survive under any rule of law, and except also cases where, after the death of the party, the relief sought could not be enjoyed, or granting it would be nugatory.

Illustration.

A collision takes place on a railway in consequence of some neglect or default of the officials, and a passenger is severely hurt, but not so as to cause death. He afterwards dies without having instituted any suit. The cause of action does not survive.

Power of executor or administrator to dispose of property.

88. (1) An executor or administrator has, subject to the provisions of this section, power to dispose, as he thinks fit, of all or any of the property for the time being vested in him under Section 4.

(2) The power of an executor to dispose of immovable property so vested in him is subject to any restriction which may be imposed in this behalf by the will appointing him, unless probate has been granted to him and the Court which granted the probate permits him by an order in writing, notwithstanding the restriction, to dispose of any immovable property specified in the order in a manner permitted by the order.

(3) An administrator may not, without the previous permission of the Court by which the letters of administration were granted,—

(*a*) mortgage, charge or transfer by sale, gift, exchange or otherwise any immovable property for the time being vested in him under Section 4, or

(*b*) lease any such property for a term exceeding five years.

(4) A disposal of property by an executor or administrator in contravention of sub-section (2) or sub-section (3), as the case may be, is voidable at the instance of any other person interested in the property.

(5) Before any probate or letters of administration is or are granted under this Regulation there shall be endorsed thereon or annexed thereto a copy of sub-sections (1), (2) and (4), or of sub-sections (1), (3) and (4), as the case may be.

(6) A probate or letters of administration shall not be rendered invalid by reason of the endorsement or annexure required by the last foregoing sub-section not having been made thereon or attached thereto, nor shall the absence of such an endorsement or annexure authorise an executor or administrator to act otherwise than in accordance with the provisions of this section.

Purchase by executor or administrator of deceased's property.

89. If an executor or administrator purchases, either directly or indirectly, any part of the property of the deceased, the sale is voidable at the instance of any other person interested in the property sold.

Powers of several executors or administrators exerciseable by one.

90. When there are several executors or administrators, the powers of all may, in the absence of any direction to the contrary in the will or letters of administration, be exercised by any one of them who has proved the will or taken out administration.

Illustrations.

(*a*) One of the several executors has power to release a debt due to the deceased.
(*b*) One has power to surrender a lease.
(*c*) One has power to sell the property of the deceased, movable or immovable.
(*d*) One has power to assent to a legacy.
(*e*) One has power to endorse a promissory note payable to the deceased.
(*f*) The will appoints A, B, C and D to be executors, and directs that two of them shall be a quorum. No act can be done by a single executor.

Survival of powers on death of one of several executors or administrators.

91. Upon the death of one or more of several executors or administrators, all the powers of the office become, in the absence of any direction to the contrary in the will or letters of administration, vested in the survivors or survivor.

Powers of administrator of effects unadministered.

92. The administrator of effects unadministered has, with respect to such effects, the same powers as the original executor or administrator.

Powers of administrator during minority.

93. An administrator during minority has all the powers of an ordinary administrator.

Powers of married executrix or administratrix.

94. When probate or letters of administration shall have been granted to a married woman, she has all the powers of an ordinary executor or administrator.

CHAPTER VII.

Of the Duties of an Executor or Administrator.

As to deceased's funeral ceremonies.

95. It is the duty of an executor to provide funds for the performance of the necessary funeral ceremonies of the deceased in a manner suitable to his condition, if he has left property sufficient for the purpose.

Inventory and account.

96. (1) An executor or administrator shall, within six months from the grant of probate or letters of administration, or within such further time as the Court which granted the probate or letters may from time to time appoint, exhibit in that Court an inventory containing a full and true estimate of all the property in possession, and all the credits, and also all the debts owing by any person to which the executor or administrator is entitled in that character,

and shall in like manner, within one year from the grant or within such further time as the said Court may from time to time appoint, exhibit an account of the estate, showing the assets which have come to his hands and the manner in which they have been applied or disposed of.

(2) The Chief Court may from time to time prescribe the form in which an inventory or account under this section is to be exhibited.

(3) If an executor or administrator, on being required by the Court to exhibit an inventory or account under this section, intentionally omits to comply with the requisition, he shall be deemed to have committed an offence under Section 176 of the Indian Penal Code.

(4) The exhibition of an intentionally false inventory or account under this section shall be deemed to be an offence under Section 193 of that Code.

As to property of, and debts owing to, deceased.

97. The executor or administrator shall collect, with reasonable diligence, the property of the deceased and the debts that were due to him at the time of his death.

Expenses to be paid before all debts.

98. Funeral expenses to a reasonable amount, according to the degree and quality of the deceased, and death-bed charges, including fees for medical attendance, and board and lodging for one month previous to his death, are to be paid before all debts.

99. The expenses of obtaining probate or letters of administration, including the costs incurred for or in respect of any judicial proceedings that may be necessary for administering the estate, are to be paid next after the funeral expenses and death-bed charges.

Expenses to be paid next after such expenses.

100. Wages due for services rendered to the deceased within three months next preceding his death by any labourer, artizan, or domestic servant are next to be paid, and then the other debts of the deceased according to their respective priorities (if any).

Wages for certain services to be next paid, and then other debts.

101. Save as aforesaid, no creditor is to have a right of priority over another. But the executor or administrator shall pay all such debts as he knows of, including his own, equally and rateably, as far as the assets of the deceased will extend.

Save as aforesaid, all debts to be paid equally and rateably.

102. Debts of every description must be paid before any legacy.

Debts to be paid before legacies.

103. If the estate of the deceased is subject to any contingent liabilities, an executor or administrator is not bound to pay any legacy without a sufficient indemnity to meet the liabilities whenever they may become due.

Executor or administrator not bound to pay legacies without indemnity.

104. If the assets, after payment of debts, necessary expenses and specific legacies, are not sufficient to pay all the general legacies in full, the latter shall abate or be diminished in equal proportions;

Abatement of general legacies.

and, in the absence of any direction to the contrary in the will, the executor has no right to pay one legatee in preference to another, nor to retain any money on account of a legacy to himself or to any person for whom he is a trustee.

Executor not to pay one legatee in preference to another.

105. Where there is a specific legacy, and the assets are sufficient for the payment of debts and necessary expenses, the thing specified must be delivered to the legatee without any abatement.

Non-abatement of specific legacy when assets sufficient to pay debts.

106. Where there is a demonstrative legacy, and the assets are sufficient for the payment of debts and necessary expenses, the legatee has a preferential claim for payment of his legacy out of the fund from which the legacy is directed to be paid until such fund is exhausted, and if, after the fund is exhausted, part of the legacy still remains unpaid, he is entitled to rank for the remainder against the general assets as for a legacy of the amount of such unpaid remainder.

Right under demonstrative legacy when assets sufficient to pay debts and necessary expenses.

107. If the assets are not sufficient to answer the debts and the specific legacies, an abatement shall be made from the latter rateably in proportion to their respective amounts.

Rateable abatement of specific legacies.

Illustration.

A has bequeathed to B, a diamond ring, valued at 500 rupees, and to C a horse, valued at 1,000 rupees. It is found necessary to sell all the effects of the testator and his assets, after payment of debts, are only 1,000 rupees. Of this sum rupees 333-5-4 are to be paid to B, and rupees 666-10-8 to C.

108. For the purpose of abatement, a legacy for life, a sum appropriated by the will to produce an annuity, and the value of an annuity when no sum has been appropriated to produce it, shall be treated as general legacies.

Legacies treated as general for purpose of abatement.

CHAPTER VIII.

OF THE EXECUTOR'S ASSENT TO A LEGACY.

Assent necessary to complete legatee's title.

109. The assent of the executor is necessary to complete a legatee's title to his legacy.

Illustrations.

(*a*) A by his will bequeaths to B his Government paper, which is in deposit with the Bank of Bengal. The Bank has no authority to deliver the securities, nor B right to take possession of them, without the assent of the executor.

(*b*) A by his will has bequeathed to C his house in Calcutta in the tenancy of B. C is not entitled to receive the rents without the assent of the executor.

Effect of executor's assent to specific legacy.

110. The assent of the executor to a specific bequest shall be sufficient to divest his interest as executor therein and to transfer the subject of the bequest to the legatee, unless the nature or the circumstances of the property require that it shall be transferred in a particular way.

Nature of assent.

This assent may be verbal, and it may be either express or implied from the conduct of the executor.

Illustrations.

(*a*) A horse is bequeathed. The executor requests the legatee to dispose of it, or a third party proposes to purchase the horse from the executor, and he directs him to apply to the legatee. Assent to the legacy is implied.

(*b*) The interest of a fund is directed by the will to be applied for the maintenance of the legatee during his minority. The executor commences so to apply it. This is an assent to the whole of the bequest.

(*c*) A bequest is made of a fund to A, and after him to B. The executor pays the interest of the fund to A. This is an implied assent to the bequest to B.

(*d*) Executors die after paying all the debts of the testator, but before satisfaction of specific legacies. Assent to the legacies may be presumed.

(*e*) A person to whom a specific article has been bequeathed takes possession of it and retains it without any objection on the part of the executor. His assent may be presumed.

Conditional assent.

111. The assent of an executor to a legacy may be conditional, and if the condition be one which he has a right to enforce, and it is not performed, there is no assent.

Illustrations.

(*a*) A bequeaths to B his lands of Sultanpur, which at the date of the will, and at the death of A, were subject to a mortgage for 10,000 rupees. The executor assents to the bequest on condition that B shall within a limited time pay the amount due on the mortgage at the testator's death. The amount is not paid. There is no assent.

(*b*) The executor assents to a bequest on condition that the legatee shall pay him a sum of money. The payment is not made. The assent is nevertheless valid.

Assent of executor to his own egacy.

112. When the executor is a legatee, his assent to his own legacy is necessary to complete his title to it, in the same way as it is required when the bequest is to another person, and his assent may in like manner be express or implied.

Implied assent.

Assent shall be implied if in his manner of administering the property he does any act which is referable to his character of legatee and is not referable to his character of executor.

Illustration.

An executor takes the rent of a house or the interest of Government securities bequeathed to him, and applies it to his own use. This is assent.

Effect of executor's assent.

113. The assent of the executor to a legacy gives effect to it from the death of the testator.

Illustrations.

(*a*) A legatee sells his legacy before it is assented to by the executor. The executor's subsequent assent operates for the benefit of the purchaser, and completes his title to the legacy.

(*b*) A bequeaths 1,000 rupees to B with interest from his death. The executor does not assent to this legacy until the expiration of a year from A's death. B is entitled to interest from the death of A.

Executor when to deliver legacies.

114. An executor is not bound to pay or deliver any legacy until the expiration of one year from the testator's death.

Illustration.

A by his will directs his legacies to be paid within six months after his death. The executor is not bound to pay them before the expiration of a year.

CHAPTER IX.

Of the Payment and Apportionment of Annuities.

Commencement of annuity when no time fixed by will.

115. Where an annuity is given by the will, and no time is fixed for its commencement, it shall commence from the testator's death, and the first payment shall be made at the expiration of a year next after that event.

When annuity, to be paid quarterly or monthly, first falls due.

116. Where there is a direction that the annuity shall be paid quarterly or monthly, the first payment shall be due at the end of the first quarter or first month, as the case may be, after the testator's death, and shall, if the executor think fit, be paid when due; but the executor shall not be bound to pay it till the end of the year.

Date of successive payments when first payment directed to be made within given time, or on day certain.

117. Where there is a direction that the first payment of an annuity shall be made within one month or any other division of time from the death of the testator, or on a day certain, the successive payments are to be made on the anniversary of the earliest day on which the will authorizes the first payment to be made;

Apportionment where annuitant dies between times of payment.

and, if the annuitant dies in the interval between the times of payment, an apportioned share of the annuity shall be paid to his representative.

CHAPTER X.

Of the Investment of Funds to provide for Legacies.

Investment of sum bequeathed where legacy, not specific, given for life.

118. Where a legacy, not being a specific legacy, is given for life, the sum bequeathed shall at the end of the year be invested in such securities as the Chief Court may, by any general rule to be made from time to time, authorize or direct, and the proceeds thereof shall be paid to the legatee as the same shall accrue due.

Investment of general legacy, to be paid at future time.

119. Where a general legacy is given to be paid at a future time, the executor shall invest a sum sufficient to meet it in securities of the kind mentioned in the last preceding section.

Intermediate interest.

The intermediate interest shall form part of the residue of the testator's estate.

120. Where an annuity is given and no fund is charged with its payment or appropriated by the will to answer it, a sum sufficient to produce the annuity shall be invested for that purpose in such securities as the Chief Court may, by any general rule to be made from time to time, authorize or direct.

Procedure when no fund charged with, or appropriated to, annuity.

121. Where a bequest is contingent, the executor is not bound to invest the amount of the legacy, but may transfer the whole residue of the estate to the residuary legatee (if any) on his giving sufficient security for the payment of the legacy if it shall become due.

Transfer to residuary legatee of contingent bequest.

122. Where the testator has bequeathed the residue of his estate to a person for life with a direction that it shall be invested in certain specified securities, so much of the estate as is not at the time of his death invested in securities of the specified kind shall be converted into money and invested in such securities.

Investment of residue bequeathed for life, with direction to invest in specified securities.

123. Such conversion and investment as are contemplated by the last preceding section shall be made at such times and in such manner as the executor in his discretion thinks fit;

Time and manner of conversion and investment.

and, until such conversion and investment shall be completed, the person who would be for the time being entitled to the income of the fund when so invested shall receive interest at the rate of six per cent per annum upon the market-value (to be computed as of the date of the testator's death) of such part of the fund as shall not yet have been so invested.

Interest payable until investment.

124. Where, by the terms of a bequest, the legatee is entitled to the immediate payment or possession of the money or thing bequeathed, but is a minor, and there is no direction in the will to pay it to any person on his behalf, the executor or administrator shall pay or deliver the same into the Court of the District Judge by whom, or by whose District Delegate, the probate was, or letters of administration with the will annexed were, granted, to the account of the legatee, and such payment into the Court of the District Judge shall be a sufficient discharge for the money so paid;

Procedure where minor entitled to immediate payment or possession of bequest, and no direction to pay to person on his behalf.

and such money, when paid in, shall be invested in the purchase of such securities, as the Chief Court may by general rule direct, which, with the interest thereon, shall be transferred or paid to the person entitled thereto, or otherwise applied for his benefit, as the Judge may direct.

CHAPTER XI.

OF THE PRODUCE AND INTEREST OF LEGACIES.

125. The legatee of a specific legacy is entitled to the clear produce thereof, if any, from the testator's death.

Legatee's title to produce of specific legacy.

Exception.—A specific bequest, contingent in its terms, does not comprise the produce of the legacy between the death of the testator and the vesting of the legacy. The clear produce of it forms part of the residue of the testator's estate.

Illustrations.

(*a*) A bequeathes his flock of sheep to B. Between the death of A and delivery by his executor the sheep are shorn, or some of the ewes produce lambs. The wool and lambs are the property of B.

(*b*) A bequeaths his Government securities to B, but postpones the delivery of them till the death of C. The interest which falls due between the death of A and the death of C belongs to B, and must, unless he is a minor, be paid to him as it is received.

(*c*) The testator bequeaths all his four per cent. Government promissory notes to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the notes, but the interest which accrues in respect of them, between the testator's death and A's completing 18, forms part of the residue.

Residuary legatee's title to produce of residuary fund.

126. The legatee under a general residuary bequest is entitled to the produce of the residuary fund from the testator's death.

Exception.—A general residuary bequest contingent in its terms does not comprise the income which may accrue upon the fund bequeathed between the death of the testator and the vesting of the legacy. Such income goes as undisposed of.

Illustrations.

(*a*) The testator bequeaths the residue of his property to A, a minor, to be paid to him when he shall complete the age of 18. The income from the testator's death belongs to A.

(*b*) The testator bequeathes the residue of his property to A when he shall complete the age of 18. A, if he complete that age, is entitled to receive the residue. The income which has accrued in respect of it since the testator's death goes as undisposed of.

Interest when no time fixed for payment of general legacy.

127. Where no time has been fixed for the payment of a general legacy, interest begins to run from the expiration of one year from the testator's death.

Exceptions.—(1) Where the legacy is bequeathed in satisfaction of a debt, interest runs from the death of the testator.

(2) Where the testator was a parent or a more remote ancestor of the legatee or has put himself in the place of a parent of the legatee; the legacy shall bear interest from the death of the testator.

(3) Where a sum is bequeathed to a minor, with a direction to pay for his maintenance out of it, interest is payable from the death of the testator.

Interest when time fixed.

128. Where a time has been fixed for the payment of a general legacy, interest begins to run from the time so fixed. The interest up to such time forms part of the residue of the testator's estate.

Exception.—Where a testator was a parent or a more remote ancestor of the legatee, or has put himself in the place of a parent of the legatee, and the legatee is a minor, the legacy shall bear interest from the death of the testator, unless a specific sum is given by the will for maintenance, or unless the will contains a direction to the contrary.

Rate of interest.

129. The rate of interest shall be six per cent. per annum.

No interest on arrears of annuity within first year after testator's death.

130. No interest is payable on the arrears of an annuity within the first year from the death of the testator, although a period earlier than the expiration of that year may have been fixed by the will for making the first payment of the annuity.

Interest on sum to be invested to produce annuity.

131. Where a sum of money is directed to be invested to produce an annuity, interest is payable on it from the death of the testator.

CHAPTER XII.

Of the Refunding of Legacies.

Refund of legacy paid under Judge's orders.

132. An executor who has paid a legacy under the order of a Judge is entitled to call upon the legatee to refund in the event of the assets proving insufficient to pay all the legacies.

133. When an executor has voluntarily paid a legacy, he cannot call upon a legatee to refund in the event of the assets proving insufficient to pay all the legacies.

No refund if paid voluntarily.

134. When the time prescribed by the will for the performance of a condition has elapsed, without the condition having been performed, and the executor has thereupon, without fraud, distributed the assets, in such case, if further time has, under the second clause of this section, been allowed for the performance of the condition, and the condition has been performed accordingly, the legacy cannot be claimed from the executor, but those to whom he has paid it are liable to refund the amount.

Refund when legacy becomes due on performance of condition within further time allowed.

Where the will requires an act to be performed by the legatee within a specified time, either as a condition to be fulfilled before the legacy is enjoyed, or as a condition upon the non-fulfilment of which the subject matter of the bequest is to go over to another person, or the bequest is to cease to have effect, the act must be performed within the time specified, unless the performance of it be prevented by fraud, in which case such further time shall be allowed as is requisite to make up for the delay caused by such fraud.

135. When the executor has paid away the assets in legacies, and he is afterwards obliged to discharge a debt of which he had no previous notice, he is entitled to call upon each legatee to refund in proportion.

When each legatee compellable to refund in proportion.

136. Where an executor or administrator has given such notices as the Chief Court may, by any general rule to be made from time to time, prescribe, for creditors and others to send in to him their claims against the estate of the deceased, he shall, at the expiration of the time therein named for sending in claims, be at liberty to distribute the assets, or any part thereof, in discharge of such lawful claims as he knows of, and shall not be liable for the assets so distributed to any person, of whose claim he has not had notice at the time of such distribution;

Distribution of assets.

but nothing herein contained shall prejudice the right of any creditor or claimant to follow the assets, or any part thereof in the hands of the persons who may have received the same respectively.

Creditor may follow assets.

137. A creditor who has not received payment of his debt may call upon a legatee who has received payment of his legacy to refund whether the assets of the testator's estate were or were not sufficient at the time of his death to pay both debts and legacies, and whether the payment of the legacy by the executor was voluntary or not.

Creditor may call upon legatee to refund.

138. If the assets were sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy, or who has been compelled to refund, under the last preceding section, cannot oblige one who has received payment in full to refund, whether the legacy were paid to him with or without suit, although the assets have subsequently become deficient by the wasting of the executor.

When legatee, not satisfied or compelled to refund under Section 137, cannot oblige one paid in full to refund.

139. If the assets were not sufficient to satisfy all the legacies at the time of the testator's death, a legatee who has not received payment of his legacy must, before he can call on a satisfied legatee to refund, first proceed against the executor if he is solvent; but, if the executor is insolvent or not liable to pay, the unsatisfied legatee can oblige each satisfied legatee to refund in proportion.

When unsatisfied legatee must first proceed against executor, if solvent.

140. The refunding of one legatee to another shall not exceed the sum by which the satisfied legacy ought to have been reduced if the estate had been properly administered.

Limit to refunding of one legatee to another.

Illustration

A has bequeathed 240 rupees to B, 480 rupees to C, and 720 rupees to D. The assets are only 1,200 rupees, and if properly administered would give 200 rupees to B, 400 rupees to C, and 600 rupees to D. C and D have been paid their legacies in full, leaving nothing to B. B can oblige C to refund 80 rupees, and D to refund 120 rupees.

Refunding to be without interest.

141. The refunding shall, in all cases, be without interest.

Residue after usual payments to be paid to residuary legatee.

142. The surplus or residue of the deceased's property, after payment of debts and legacies, shall be paid to the residuary legatee when any has been appointed by the will.

Transfer of assets from Mysore to executor or administrator in country of domicile for distribution.

143. Where a person not having his domicile in Mysore has died leaving assets both in Mysore and in the country in which he had his domicile at the time of his death,

and there have been a grant of probate or letters of administration in Mysore with respect to the assets there and a grant of administration in the country of domicile with respect to the assets in that country, the executor or administrator, as the case may be, in Mysore, after having given such notices as are mentioned in Section 136 and after having discharged, at the expiration of the time therein named, such lawful claims as he knows of,

may, instead of himself distributing any surplus or residue of the deceased's property to persons residing out of Mysore who are entitled thereto, transfer, with the consent of the executor or administrator, as the case may be, in the country of domicile, the surplus or residue to him for distribution to those persons.

CHAPTER XIII.

Of the Liability of an Executor or Administrator for Devastation.

Liability of executor or administrator for devastation:

144. When an executor or administrator misapplies the estate of the deceased, or subjects it to loss or damage, he is liable to make good the loss or damage so occasioned.

Illustrations.

(*a*) The executor pays out of the estate an unfounded claim. He is liable to make good the loss caused by the payment.

(*b*) The deceased had a valuable lease renewable by notice, which the executor neglects to give at the proper time. The executor is liable to make good the loss caused by the neglect.

(*c*) The deceased had a lease of less value than the rent payable for it, but terminable on notice at a particular time. The executor neglects to give the notice. He is liable to make good the loss.

For neglect to get in any part of property.

145. When an executor or administrator occasions a loss to the estate by neglecting to get in any part of the property of the deceased, he is liable to make good the amount.

Illustrations.

(*a*) The executor absolutely releases a debt due to the deceased from a solvent person, or compounds with a debtor who is able to pay in full. The executor is liable to make good the amount so lost.

(*b*) The executor neglects to sue for a debt till the debtor is able to plead the Regulation for the limitation of suits, and the debt is thereby lost to the estate. The executor is liable to make good the amount of the debt.

CHAPTER XIV.

Miscellaneous.

Provisions applied to administrator with will annexed.

146. In Chapters VIII, IX, X and XII of this Regulation the provisions as to an executor shall apply also to an administrator with the will annexed.

147. Nothing herein contained shall--

Saving-clause.

(*a*) validate any testamentary disposition which would otherwise have been invalid

(*b*) invalidate any such disposition which would otherwise have been valid; or,

(*c*) deprive any person of any right of maintenance to which he would otherwise have been entitled.

Probate and administration in case of persons exempted from Succession Act, to be granted only under this Regulation.

148. No proceedings to obtain probate of a will, or letters of administration to the estate, of any Hindu, Mahomedan, Buddhist or person exempted under Section 332 of the Indian Succession Act, 1865, as applied to Mysore, shall be instituted in any Court in Mysore except under this Regulation.

Amendment of Limitation Regulation, 1911.

149. In the first schedule to the Mysore Limitation Regulation, 1911, No. 43, after the figures "321," the following shall be inserted, namely,—"or under the Probate and Administration Regulation, 1914, Section 136 or 137."

Surrender of revoked probate or letters of administration.

150. (1) When a grant of probate or letters of administration is revoked or annulled under this Regulation, the person to whom the grant was made shall forthwith deliver up the probate or letters to the Court which made the grant.

(2) If such person wilfully and without sufficient cause omits so to deliver up the probate or letters, he shall be punished with fine which may extend to one thousand rupees, or with imprisonment which may extend to three months, or with both.

M. VISVESVARAYA,
Dewan.